Supreme Court, U.S.
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In The

Supreme Court of the United States

TIBERIO P. DEJULIO and EVA C. GALAMBOS,

Petitioners,

v.

STATE OF GEORGIA, ROY E. BARNES, in his official capacity as the Governor of Georgia, MARK F. TAYLOR, in his official capacity as Lieutenant Governor of Georgia, THOMAS B. MURPHY, in his official capacity as Speaker of the House of Representatives of the State of Georgia, GEORGIA HOUSE OF REPRESENTATIVES, GEORGIA SENATE, FULTON COUNTY HOUSE DELEGATION, FULTON COUNTY SENATE DELEGATION, JAMES McKINNEY, in his official capacity as Chairperson of the Fulton County House Delegation, DAVID SCOTT, in his official capacity as Chairperson of the Fulton County Senate Delegation, and Unknown 1-158 DOE COUNTY HOUSE AND SENATE DELEGATIONS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether local county and city delegations of the Georgia Senate and House of Representatives implicate the "one person, one vote" principle of the Fourteenth Amendment to the United States Constitution by drafting, considering, and debating all local legislation before it is "rubber-stamped" by the full Georgia General Assembly and signed into law by the Georgia Governor?

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on May 8, 2002, so the Supreme Court can answer the important question of federal law presented herein, which should be settled by this Court.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit entered on May 8, 2002, that gives rise to this Petition is published at *DeJulio v. Georgia*, 290 F.3d 1291 (11th Cir. 2002). App. 1-19.

JURISDICTION

Petitioners seek review from the opinion and judgment of the United State Court of Appeals for the Eleventh Circuit of May 8, 2002. The Supreme Court has jurisdiction to review cases from the Courts of Appeals under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This Petition questions whether the "one person, one vote" principle of the Fourteenth Amendment applies to the local delegations of the Georgia Senate and Georgia House of Representatives. Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV. App. 110-111. Petitioners brought suit for violation of their Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Petitioners filed a civil rights action pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment of the United States Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, as amended. Jurisdiction over Petitioners' Complaint was based upon the federal questions raised by the Complaint. Petitioners alleged that the current procedures for enactment of local legislation by the Georgia General Assembly constituted a violation of the "one person, one vote" standard of the Fourteenth Amendment of the United States Constitution.[1] Additionally, Petitioners argued that the changes in the General Assembly's internal rules are subject to the preclearance requirement of Section 5 of the Voting Rights Act.

[1] The rules for enacting local legislation through the Georgia Senate and the Georgia House of Representatives are set forth in the Senate Rules and the House Rules. App. 86-104.

The United States District Court for the Northern District of Georgia, Atlanta Division, granted summary judgment against Petitioners holding: (1) the "one person, one vote" requirement did not apply to the Georgia General Assembly's local legislative delegations because those delegations do not perform "governmental functions," as that term has been defined under federal equal protection law, and (2) the changes in internal rules and procedures by which the Georgia General Assembly enacted local legislation were not subject to the Voting Rights Act's preclearance requirements. *DeJulio v. Georgia*, 127 F. Supp.2d 1274 (N.D. Ga. 2001). App. 28-85. Petitioners appealed this judgment on both issues to the United States Court of Appeals for the Eleventh Circuit.

Initially, the Eleventh Circuit reversed in part and affirmed in part. *DeJulio v. Georgia*, 276 F.3d 1244 (11th Cir. 2001). App. 13-27. As to the first issue, the Eleventh Circuit reversed, holding that the district court should have abstained from the equal protection issue and allowed a state court to determine whether Georgia Senate and House local delegations perform "governmental functions." The panel split on this issue, with the dissent finding that the abstention doctrine did not apply. As to the second issue, the full panel affirmed the district court's holding.

Petitioners sought a rehearing and a rehearing en banc as to the panel's first holding regarding abstention. Petitioners did not seek a rehearing of the panel's holding regarding the Voting Rights Act claim.

The Eleventh Circuit granted Petitioners' Petition for Rehearing and denied Petitioners' Petition for Rehearing En Banc. *DeJulio v. State of Georgia*, 290 F.3d 1291 (11th

Cir. 2002). App. 1-12. On rehearing, the Eleventh Circuit reversed its position on abstention and addressed the merits of Petitioners' "one person, one vote" claim. The Eleventh Circuit affirmed the district court's ruling that Georgia's Senate and House local delegations do not perform "governmental functions." Petitioners seek a writ of certiorari as to the "one person, one vote" issue only.

The facts in this case were essentially undisputed. The Constitution of the State of Georgia permits State government to exercise only three types of power: legislative, judicial, and executive. *See*, Ga. Const. Art. I, Sec. II, Par. III. The legislative power of the State is vested in the Georgia General Assembly, which consists of the Senate and the House of Representatives. Ga. Const. Art. III, Sec. I, Par. I. By Senate and House Rules, custom, and practice, however, local legislative power is exercised by county and city Senate and House delegations.

"Local legislation" is legislation that applies to a specific city, county, or specific district. Local legislation is used to create or abolish cities, change city boundaries, and accomplish various other important local tasks. Local legislation comprises a significant percentage of the legislation passed each year by the General Assembly.

County and city delegations of the Georgia Senate and House consist of members who are popularly elected Senators or Representatives and who become members of a delegation automatically upon their election by virtue of their districts lying wholly or partially in a city or county within the Senator or Representative's district. *DeJulio*, 290 F.3d at 1296. App. 9; *see also* Rules of the Georgia State Senate ("Senate Rules") No. 187(u) and Rules of the House of Representatives ("House Rules") No. 11. App. 86-104. At the

heart of this Petition is the role that the local delegations perform in the enactment of local legislation.

Local legislation is introduced and debated within the local delegation, but seldom is debated on the floor of the House or Senate. 290 F.3d at 1296. App. 9. The Eleventh Circuit characterized the Georgia General Assembly's deference to the local delegations with respect to the passage of local delegation as a custom of "local courtesy." *DeJulio*, 290 F.3d at 1293-1294. App. 4-5. Petitioners presented undisputed evidence that under this custom, approval by a local delegation of local legislation is tantamount to passage of this legislation by the General Assembly. Indeed, the district court specifically found, and the Eleventh Circuit accepted, that "the local delegations ***propose all local legislation***; and this legislation typically . . . is ***'rubber-stamped' by the full General Assembly without further discussion or debate.***" *DeJulio*, 127 F. Supp.2d at 1281 (emphasis added). App. 37-38; *DeJulio v. Georgia*, 290 F.3d at 1294. App. 5.

Based on this undisputed evidence, Petitioners argued that constituents in 53 counties suffered unlawfully diluted and debased voting power with respect to the consideration and enactment of local legislation for their respective counties. Petitioners' argument is based upon the undisputed population data for Georgia's 159 counties broken down according to the House and Senate Districts located in those counties. *DeJulio v. Georgia*, 290 F.3d 1291, 1294, n.8 (11th Cir. 2002). App. 5. In each of these 53 malapportioned counties, there is a senator or House member who has one vote on local legislation, while another senator or House member with significantly fewer constituents in the county also has one vote on the same legislation.

Plaintiff DeJulio illustrates the specific nature of Petitioners' claims. DeJulio is a voter and a resident of Fulton County who lives in Senate District 40 and House District 45. His senator, who has one vote on Fulton County local legislation, represents 111,380 constituents who live in Fulton County. *DeJulio*, 127 F. Supp.2d at 1286-1287. App. 49-50. The Senator representing District 48 also has one vote on Fulton County local legislation, but represents only 5,915 Fulton County constituents. *Id.* at 1282. App. 40.

Petitioners argued below that these deviations, when viewed in the context of how local legislation is enacted in Georgia, serve to unlawfully dilute the votes of thousands of Georgians. The district court disagreed, finding instead that the local legislation delegations do not perform "governmental functions," as that phrase is construed under the relevant equal protection jurisprudence. Accordingly, the district court held that the "one person, one vote" mandate of the Equal Protection Clause of the United States Constitution does not apply to local delegations and dismissed Petitioners' equal protection claims. The Eleventh Circuit affirmed. *DeJulio*, 290 F.3d at 1296. App. 8-10.

In addition to Petitioners' "one person, one vote" claims, Petitioners alleged a violation of Section 5 of the Voting Rights Act. The district court and the Eleventh Circuit ruled against Petitioners on this claim. Petitioners do not seek a review of the ruling on the Section 5 claim in this Petition.

REASONS FOR GRANTING THE WRIT

THE SUPREME COURT SHOULD SETTLE THE ISSUE OF WHETHER THE PHRASE "GOVERNMENTAL FUNCTIONS" IS BOUND BY THE STRICT LIMITATIONS SET FORTH BY THE ELEVENTH CIRCUIT

Petitioners petition the Court to close a significant loophole in this Court's "one person, one vote" equal protection jurisprudence. The Eleventh Circuit court held that Georgia's local delegations do not perform "governmental functions" because local legislation is not officially made law until passed by the full General Assembly and signed by the governor. This holding elevates form over substance and establishes dangerous precedent. Every local law passed by the Georgia General Assembly comes from local delegations. These delegations draft, consider, and debate all local bills. It is undisputed that these local bills are, in turn, "rubber-stamped" by the full Georgia General Assembly and the Governor.

The Eleventh Circuit held, however, that the delegations do not perform "governmental functions" because technically the General Assembly and the Governor do not have to accept the bills drafted, debated, and endorsed by the local delegations. The Eleventh Circuit agreed that the General Assembly "rubber-stamps" the bills proposed by local delegations. Nevertheless, because, it is theoretically possible that the General Assembly might decline to pass a local bill presented by a particular local delegation, the delegations avoid the limits of the Constitution of the United States altogether. This Court should grant the Petition and determine whether the "one person, one vote" principle is limited to governmental form and ignores practical legislative reality.

The Equal Protection Clause "requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). This Court applies the "one person, one vote" requirement to local government "whenever a state or local government decides to select persons by popular election to perform governmental functions[.]" *Hadley v. Junior College Dist. of Metropolitan Kansas City*, 397 U.S. 50, 56 (1979). Under these circumstances, the Equal Protection Clause:

> [R]equires that each qualified voter must be given an equal opportunity to participate in that election, **and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of Petitioners can vote for proportionally equal numbers of officials**.

See Vander Linden v. Hodges, 193 F.3d 268, 272 (4th Cir. 1999) (emphasis added).

The "one person, one vote" principle applies if the officials are selected by popular elections and if those officials perform "governmental functions." *Id.* at 272. If the answer to both of these inquiries is "yes", then the "one person, one vote" requirement applies, and each qualified voter participating in the election of the officials has a constitutional right to vote in a manner, as far as is practicable, such that equal numbers of Petitioners can vote for proportionally equal numbers of officials. *Hadley*, 397 U.S. at 56. This does not happen with regard to the selection of members of Georgia Senate and House local

delegations. Members of local delegations are unquestionably popularly elected. *DeJulio*, 290 F.3d at 1295. App. 7.

Relying on *Hadley*, however, the Eleventh Circuit determined that Georgia Senate and House local delegations do not engage in "governmental functions." The Eleventh Circuit found that "if local legislation [] receive[s] the requisite number of signatures of representatives and senators whose districts lie partially or wholly within the locality which the legislation affects [*i.e.*, the local delegations], it is ordinarily passed on an uncontested basis as a matter of local courtesy" by the General Assembly. *DeJulio*, 290 F.3d at 1293. App. 4. Despite this finding, however, the Eleventh Circuit held that local delegations do not perform governmental functions because the bills drafted by the delegations do not officially become law until voted on by the General Assembly and signed by the Governor. *Id.* The Eleventh Circuit agreed with Petitioners that the full General Assembly simply "rubber-stamps" the bills passed by the delegations without further debate, comment, or amendment. Even so, according to the Eleventh Circuit, because the General Assembly retains the formal right to pass the legislation, the delegations do not have to meet the requirements of "one person, one vote." This holding allows legislative rulemaking and custom to eviscerate the protection of the Fourteenth Amendment.[2]

[2] Notably, a significant percentage of legislation passed by the Georgia General Assembly is local legislation. Approximately one-third of all legislation enacted by the General Assembly during the 2000

(Continued on following page)

Georgia's local delegations engage in lawmaking by assuming all of the meaningful responsibilities associated with the enactment of local legislation. Specifically, the local delegations draft, consider, debate, and, for all practical purposes, enact all local bills. This is lawmaking in its purest form – a governmental function.

The Eleventh Circuit's holding to the contrary – that the delegations do not perform "governmental functions" because the bills submitted by the delegations do not become law until they receive the "rubber-stamp" of the General Assembly – vastly understates the role that the local delegations perform. In reality, the local delegations, not the General Assembly, make local law.

Petitioners' argument is buttressed by *Vander Linden v. Hodges*, a Fourth Circuit decision with facts strikingly similar to those at issue here. 193 F.3d 268 (4th Cir. 1999). In *Vander Linden*, a group of voters challenged the state's county legislative delegation system under the "one person, one vote" requirement under the equal protection clause. In *Vander Linden*, as here, legislators were "elected from districts that contain parts of more than one county." 193 F.3d at 271. Furthermore, as here, "[u]pon election to the General Assembly, each legislator automatically [became] a member of the legislative delegation of every county containing territory that falls within the legislator's district." *Id.* Finally, "each member of a delegation [had] one vote in delegation decisions regardless of the number of constituents he or she has in the county." *Id.*

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session was local legislation; in the 1999 session, local legislation constituted more than half of the legislation passed.

Under these facts, the Fourth Circuit held that the "one person, one vote" mandate applied to the local legislative delegations.

The Eleventh Circuit distinguished *Vander Linden* on the ground that in South Carolina there was a wide array of statutes that provided authority for members of local delegations to exercise powers related to local governments and their operations.[3] In other words, the local legislation delegations in *Vander Linden* had the "final governmental authority" that the Eleventh Circuit viewed as necessary to trigger the "one person, one vote" requirement.

As already shown, this distinction raises theoretical form over practical substance by ignoring the actual, undisputed power wielded by Georgia's local delegations. Once this actual power is properly accounted for, the instant case presents an even stronger case for the application of the "one person, one vote" mandate than did the facts before the Fourth Circuit in *Vander Linden*. In South Carolina, the authority of local legislative delegations was defined, and, more importantly, limited, by statute. The local legislative delegations in Georgia, however, are restrained by no such limitations – statutory or otherwise.

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[3] Specifically, these statutes granted the South Carolina delegations the power to (1) approve the payment of funds distributed to counties containing state forest lands; (2) approve refunds of state gasoline taxes; (3) obtain the release of infectious waste contingency funds; (4) approve the budgets of certain educational commissions; (5) initiate a referendum to determine the budgetary powers and election of the governing bodies of special purpose and public service districts; (6) approve the alteration or division of school districts; and (7) to approve the reduction of certain school tax levies. *Id.* at 276-77.

This is so because, as the Eleventh Circuit recognized, once a local delegation agrees upon a particular piece of legislation, that legislation is summarily approved by the General Assembly. Thus, that Georgia local legislative delegations do not have statutorily proscribed limitations on their authority does not render *Vander Linden* inapplicable, but, on the contrary, makes the instant case even stronger than *Vander Linden*.

Moreover, *Vander Linden* supports the proposition that in considering an equal protection challenge, a court should focus not on the technical authority that a particular government entity does or does not enjoy, but rather on what the subject entity actually does. In *Vander Linden*, the Fourth Circuit expressly examined "the powers presently ***exercised*** by the delegations" in evaluating the plaintiffs' equal protection claim rather than simply looking at the delegations' technical authority as recognized by South Carolina law. *Id.* at 276 (emphasis added). This, of course, is precisely the type of examination that is appropriate here and which should receive this Court's explicit approval.

By understating the local delegation's role as one that is merely "advisory," the Eleventh Circuit implied that the General Assembly's role in the enactment of local legislation extends beyond its blind and unquestioning acceptance of the local delegation's "advice" on virtually every occasion. There is no evidence in the record to support this supposition, however. Indeed, the Eleventh Circuit accepted that the Georgia General Assembly's role with respect to the enactment of ***local legislation*** is purely ministerial and that, as a practical matter, the local delegations enact all local legislation. Nonetheless, the Eleventh Circuit held that local delegations do not perform

"governmental functions." This holding creates dangerous precedent in equal protection jurisprudence, and provides a roadmap of how a state may euphemistically label law-making processes to avoid the requirements of the Equal Protection Clause. Under the Eleventh Circuit's reasoning, so long as a popularly elected delegation's role with respect to the enactment of legislation is characterized as "advisory" and as long as a proposed bill may technically be debated by the larger legislative body, no equal protection issues are raised. This creates a loophole in the Equal Protection Clause that strikes at the heart of a true representative government.

It is not difficult to imagine how a government entity, armed with the message that it is only the labels that count, could disenfranchise certain constituents by characterizing, for example, a racially motivated legislative process as "internal rulemaking" or the performance of an "advisory" role. Unfortunately, history is replete with instances of such racially motivated wrongdoings. By way of just one example, in the landmark *Terry v. Adams* decision, this Court considered the constitutionality of the actions of a private political county organization (the "Jaybird Party"), which excluded African Americans from its unregulated "primaries." 345 U.S. 461, 462-63 (1953). This Court expressly rejected the Jaybird Party's argument that the Fifteenth Amendment did not apply to it because it was not a state actor:

> It is significant that precisely the same qualifications prescribed by Texas entitling electors to vote at county-operated primaries are adopted as the sole qualifications entitling electors to vote at the countywide Jaybird primaries with a single proviso – Negroes are excluded. Everyone concedes

> that such a proviso in the county operated primaries would be unconstitutional. The Jaybird Party thus brings into being and holds precisely the kind of election that the Fifteenth Amendment seeks to prevent. ***When it produces the equivalent of the prohibited election, the damage has been done***.

Id. at 469 (emphasis added).

Although *Terry* addressed the requirements of the Fifteenth Amendment, the applicability of this Court's reasoning is clear: it is the practical result of an entity's influence, not the label assigned to its function, that is relevant under Constitutional scrutiny.

Thus, as *Terry* demonstrates, the mandate of the Equal Protection Clause cannot be circumvented merely by assigning misleading, benign labels to the powerful functions that a particular government entity performs. And yet, this is precisely what the Eleventh Circuit held. The Eleventh Circuit explicitly recognized that the local delegations of the Georgia Senate and the Georgia House of Representatives have plenary authority with respect to the enactment of local legislation. The undisputed facts show that local delegations enact legislation without any real scrutiny by the Georgia General Assembly. Yet, according to the Eleventh Circuit, these law-making delegations do not have to be composed in accord with the "one person, one vote" principle of the Fourteenth Amendment to the United States Constitution. A proper analysis does not rest on form, but relies upon substance. This Court should close the loophole opened by the Eleventh Circuit. Certiorari is appropriate.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-10806

D.C. Docket No. 00-00273-CV-TWT-1

TIBERIO P. DEJULIO
EVA C. GALAMBOS,

Plaintiffs-Appellants,

versus

STATE OF GEORGIA, ROY E. BARNES,
in his official capacity as the Governor of Georgia, et al.

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(Filed May 8, 2002)

ON PETITION FOR REHEARING AND
SUGGESTION OF REHEARING EN BANC

Before BIRCH, COX and ALARCON*, Circuit Judges.

BIRCH, Circuit Judge:

No member of this panel nor other judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Fed.R.App.P. 11th Cir. Rule 35-5), the suggestion of rehearing en banc is DENIED. However, the original panel grants rehearing (although on grounds other than those urged by appellant), withdraws the previous panel opinion dated December 21, 2001, published at 276 F.3d 1244 (11th Cir. 2001), and the following opinion is substituted.

This appeal presents the following issues: (1) whether the procedures by which the Georgia General Assembly considers "local legislation" violate the principle of "one person, one vote," and (2) whether the changes in internal rules and procedures by which the General Assembly enacts local legislation are subject to the preclearance requirement of the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, as amended. The district court determined that, although the members of the Georgia General Assembly's local delegations were popularly elected, they did not engage in governmental functions, and, therefore, the "one person, one vote" requirement did not apply. Regarding the second issue, the district court found that the preclearance requirements of the Voting Rights Act did not apply to the changes in the General Assembly. We AFFIRM.

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* Honorable Arthur L. Alarcon, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

I. BACKGROUND

The legislative power of the state is vested in the General Assembly, which consists of a House of Representatives and a Senate.[1] Ga. Const., art. III, § 1, ¶ 1. Both the House and Senate have adopted their own rules to govern organization and basic rules of operation.[2] Local legislation, which is legislation that applies to a specific city, county, or special district, comprises a large part of the bills introduced and enacted by the General Assembly each year.[3] Because of this volume, the House and the Senate have adopted local delegations for the consideration of local legislation. Each county, municipality, or other jurisdiction has a local delegation and any legislator whose district encompasses territory within a specific city or county is a member of the local delegation for that entity.

The local delegations make recommendations to the House and Senate standing committees, which then recommend local legislation to the entire body[4]. A local bill

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[1] Hereinafter, the Georgia House of Representatives and Georgia Senate will be referred to respectively as "House" and "Senate."

[2] The district court took judicial notice of the 2000 Rules of the Georgia House of Representatives and the 2000 Rules of the Georgia Senate. *DeJulio v. Ga.*, 127 F. Supp.2d 1274, 1284 (N.D. Ga. 2001).

[3] Local legislation is introduced to change city boundaries, create local authorities, or make other changes that apply only to the particular political subdivision named in a bill. Approximately one-third of all legislation enacted during the General Assembly's 2000 session was local legislation. *DeJulio,* 127 F. Supp.2d at 1280. In 1999, local legislation constituted 52.5% of all enacted legislation. *Id.*

[4] The standing committees are the State Planning and Community Affairs Committee in the House and the State and Local Government Operations Committee in the Senate. *Id.* at 1280-81.

must receive the requisite majority from the local delegation to be reported favorably out of the standing committees with a "do pass" recommendation. Absent local delegation rules filed in the House Standing Committee, unanimous support from the local delegation is required for the committee to report the legislation favorably to the full House with a "do pass" recommendation.[5] Similarly, Senate Rule 187(u) provides that local legislation must be approved by a majority of the senators who represent the locality in question. If the local delegation is equally divided on the proposed legislation, however, the committee then considers the legislation on its own merits and can report it with either a "do pass" or "do not pass" recommendation.

If local legislation has received the requisite number of signatures of representatives and senators whose districts lie partially or wholly within the locality which the legislation affects, it is ordinarily passed on an uncontested basis as a matter of local courtesy.[6] The underlying assumption of local courtesy is that the bill affects only a certain city or county, and, therefore, representatives and senators of other districts should defer to that local delegation's judgment. Local courtesy is a custom, however, and is not provided for in either the House or Senate rules.

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[5] House Rule 11 provides that a majority of the representatives whose districts lie within a political subdivision may file with the State Planning and Community Affairs Committee their own local rules for consideration of local legislation.

[6] Both the House and Senate permit numerous local bills to be voted on by the full body through a "local consent calendar" that contains uncontested local legislation. *DeJulio,* 127 F. Supp.2d at 1281.

Should a member of the House or Senate choose to challenge local legislation on the floor, local courtesy is not enforced.[7]

It is undisputed that these challenges seldom happen. The district court noted that "in practice, the local delegations propose all local legislation; and this legislation typically, but not always, is 'rubber-stamped' by the full General Assembly without further discussion or debate." *DeJulio,* 127 F. Supp.2d at 1281. For local legislation to become law, however, the Governor must sign it within forty days from the end of the legislative session. *Id.*

Plaintiffs-appellants, Tiberio P. DeJulio and Eva C. Galambos (hereinafter "Voters"), filed a voting rights action pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment of the United States Constitution, and an action to enforce the provisions of the Fourteenth Amendment and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.,* as amended. Voters alleged that the current procedures for enactment of local legislation of the General Assembly constituted a violation of the "one person, one vote" standard.[8] Additionally, Voters argued that the changes in the General Assembly's internal rules are

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[7] Senate Rule 113(e) provides that three senators, only one of whose district must lie within the political subdivision directly affected, may have a particular local bill removed from the local consent calendar by objecting to it in writing.

[8] Voters' argument is based on the undisputed population data for Georgia's 159 counties broken down according to the House and Senate Districts located in those counties. Voters allege that a House or Senate member with constituents in the county have one vote on local legislation while another House or Senate member with fewer constituents in the county also has one vote on local legislation affecting the county.

subject to the preclearance requirement of Section 5 of the Voting Rights Act. *DeJulio,* 127 F. Supp.2d at 1282. The district court granted summary judgment to the appellees and determined that: (1) the "one person, one vote" requirement did not apply to the General Assembly's local legislative delegations, and (2) the changes in internal rules and procedures by which the General Assembly enacted local legislation were not subject to the Voting Rights Act's preclearance requirements. *Id.* at 1302. Voters appeal this judgment on both issues.

II. DISCUSSION

We review a district court's grant of summary judgment *de novo,* apply the same standard as the district court, and review all facts and reasonable inferences in the light most favorable to the nonmoving party. *Allison v. McGhan Med. Corp.,* 184 F.3d 1300, 1306 (11th Cir. 1999). Summary judgment is appropriate when "the pleadings, depositions and answers to interrogatories, and admissions on file, together with the affidavits, if any," show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Celotex v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 2553 (1986) (quoting Fed.R.Civ.P. 56(c)).

A. *"One Person, One Vote"*

In *Hadley v. Junior College Dist.,* the Supreme Court enunciated the principle of "one person, one vote":

> [W]henever a state or local government decides to select persons by *popular election to perform governmental functions,* the Equal Protection Clause of the Fourteenth Amendment requires

> that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

397 U.S. 50, 56, 90 S. Ct. 791, 795 (1970) (emphasis added). Thus, under *Hadley,* in order for the "one person, one vote" requirement to apply to the General Assembly's local delegations, Voters must show: (1) that the House and Senate delegations are selected by "popular election;" and (2) that these delegations perform "governmental functions." *Id.*

We agree with the district court that the first element of the *Hadley* test is clearly satisfied. "When public officials become members of a governmental body simply by virtue of their popular election to the legislature, they are deemed popularly elected for the purposes of the 'one person, one vote' requirement." *DeJulio,* 127 F. Supp.2d at 1294. Georgia's local legislative delegations are deemed popularly elected because representatives and senators become delegation members by virtue of their popular election, not through appointment.

As to the second element of the *Hadley* test, the district court correctly concluded that the Georgia General Assembly's local delegations do not engage in "governmental functions." The Supreme Court has recognized the following functions as governmental: the ability to "levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in

general manage the operations of the junior college," *Hadley,* 397 U.S. at 53-54, 90 S. Ct. at 794, appoint county officials, make contracts, establish and maintain a courthouse and jail, administer the county welfare system, perform duties in connection with elections, set the county tax rate, build roads and bridges, adopt the county budget, build and run hospitals, airports, and libraries, fix school district boundaries, establish a housing authority, and determine the election districts for county commissioners. *Avery v. Midland County,* 390 U.S. 474, 476-77, 88 S. Ct. 1114, 1116 (1968). This list, however, is non-exhaustive.

Voters claim that, although the local delegations do not carry out any of the listed functions, the delegations engage in "lawmaking," a distinct governmental function, which brings them under the ambit of the "one person, one vote" requirement.[9] They argue that "the local delegations

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[9] Voters contend that their argument is buttressed by *Vander Linden v. Hodges,* 193 F.3d 268 (4th Cir. 1999), where the Fourth Circuit concluded that South Carolina's local legislative delegations did engage in governmental functions. However, as the district court points out, Voters' ignore important relevant distinctions between the role of South Carolina's local legislative delegations and those of Georgia. The district court distinguishes *Vander Linden* by noting:

> A reading of the statutes at issue in *Vander Linden* shows that South Carolina's local legislative delegations performed local governmental functions either in lieu of or in concert with local governments, depending on the situation. The statutes the Fourth Circuit cited in *Vander Linden* do not limit the role of South Carolina's local legislative delegations to consideration of local legislation. They instead broadly define the role of South Carolina's local legislative delegations in overseeing and approving local governments' general activities. Indeed most of these statutes explicitly provide that the local legislative delegation, not the entire General Assembly, is the final authority . . .

(Continued on following page)

draft, consider, debate, and, for all practical purposes, enact all local bills, which the General Assembly merely 'rubber stamps' in ministerial fashion without further discussion or debate." Appellants' Br. at 13.

As Voters point out, a local bill must receive the requisite majority from the local delegation to be reported favorably out of the standing committees with a "do pass" recommendation. It is true, moreover, that if local legislation has received the requisite number of signatures of representatives and senators whose districts lie partially or wholly within the locality which the legislation affects, it is ordinarily passed on an uncontested basis as a matter of local courtesy by the General Assembly.

As the district court noted, however, Georgia law does not codify or require the discretionary deference to local courtesy when either the House or Senate addresses local legislation. Local delegations are made up of individual members of the General Assembly and operate solely within the procedural confines of the legislature itself. Members of the General Assembly can contest local legislation of which they disapprove by removing it from the consent calendar and requiring the whole body to vote upon it. Objections to local legislation typically are not

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> In contrast, no final governmental authority is granted to the Georgia General Assembly's local delegations. The Georgia Constitution explicitly provides that the General Assembly *as a whole,* not specific local delegations, is the legislative authority for Georgia's counties and municipalities.

DeJulio, 127 F. Supp.2d at 1296-97. We find the district court's reasoning persuasive. Accordingly, *Vander Linden* is distinguishable from this case.

pursued; nonetheless, this does not render plenary authority to the local delegations with respect to the enactment of local legislation, as Voters argue. The local delegations only make recommendations to the House and Senate standing committees, which then propose local legislation to the entire body. Local legislation is not officially enacted until it is voted on by a majority of the full House and Senate and signed by the Governor. Thus, the General Assembly, which has undisputedly been apportioned in accordance with the "one person, one vote" requirement, engages in the governmental function of lawmaking, not the local delegations.

B. *Section 5 of the Voting Rights Act*

Section 5 of the Voting Rights Act requires a jurisdiction covered by the Act to obtain either judicial or administrative preclearance before implementing a new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964."[10] 42 U.S.C. § 1973c (Voting Rights Act of 1965 § 5). If a covered jurisdiction fails to seek preclearance for a proposed voting-law change, a private party injured by that change can bring an action for a declaratory judgement and injunctive relief by alleging that the change is within the scope of Section 5 and that it requires preclearance. *Id.*

In this case, Voters, without identifying specific rule changes, argue that the changes in Rules of the General

[10] Georgia is a "covered jurisdiction," as are its "political subunits." 28 C.F.R. Part 1 & § 51.6.

Assembly are subject to preclearance. The preclearance requirements of the Voting Rights Act apply to legislative internal rule changes in only the most limited of circumstances: (1) changes to the manner of voting; (2) changes to candidacy requirements and qualifications; (3) changes to the composition of the electorate; and (4) changes that affect the creation or abolition of an elective office. *Presley v. Etowah County Commission,* 502 U.S. 491, 493, 112 S. Ct. 820, 823 (1992). In *Presley,* the Court held that changes in the decision-making authority of elected officials are not changes in voting practices or procedures that require preclearance pursuant to Section 5 of the Voting Rights Act. *Id.* at 503, 112 S. Ct. at 829. The change "concerns only the internal operations of an elected body and the distribution of power among officials, and, thus, has no direct relation to, or impact on, voting." *Id.* at 492, 112 S. Ct. at 823. Hence, the district court correctly determined that preclearance requirements did not apply to changes in internal rules and procedures by which the General Assembly enacted local legislation applicable to a specific city, county, or district.

III. CONCLUSION

This case involved the appeal of a grant of summary judgment in which the district court held: (1) the "one person, one vote" requirement did not apply to the General Assembly's local legislative delegations, and (2) the changes in internal rules and procedures by which the General Assembly enacted local legislation were not subject to the Voting Rights Act's preclearance requirements. Local delegations do not perform governmental functions, which would bring them under the "one person,

one vote" requirement. Further, preclearance is not required because changes in the decision-making authority of elected officials are not changes in voting practices or procedures that require preclearance pursuant to Section 5 of the Voting Rights Act. We AFFIRM the judgment of the district court.

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-10806

D.C. Docket No. 00-00273-CV-TWT-1

TIBERIO P. DEJULIO
EVA C. GALAMBOS,

Plaintiffs-Appellants,

versus

STATE OF GEORGIA,
ROY E. BARNES, in his official capacity
as the Governor of Georgia, et al.

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(Filed Dec. 21, 2001)

Before BIRCH, COX and ALARCON*, Circuit Judges.

BIRCH, Circuit Judge:

This appeal presents the following issues: (1) whether the procedures by which the Georgia General Assembly

* Honorable Arthur L. Alarcon, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

considers "local legislation" violate the principle of "one person, one vote," and (2) whether the changes in internal rules and procedures by which the General Assembly enacts local legislation are subject to the preclearance requirement of the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, as amended. As to the first issue, the district court determined that, although the members of the Georgia General Assembly's local delegations were popularly elected, they did not engage in governmental functions, and, therefore, the "one person, one vote" requirement does not apply. Under the circumstances of this case, the district court should have invoked *Pullman*[1] abstention concerning this issue. Regarding the second issue, we affirm the court's determination that the preclearance requirements of the Voting Rights Act did not apply to the changes in the General Assembly. Accordingly, we REVERSE in part and AFFIRM in part.

I. BACKGROUND

The legislative power of the state is vested in the General Assembly, which consists of a House of Representatives and a Senate.[2] Ga. Const., art. III, § 1, ¶ 1. Both the House and Senate have adopted their own rules to govern organization and basic rules of operation.[3] Local

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[1] The first abstention doctrine was created by the Supreme Court in *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941).

[2] Hereinafter, the Georgia House of Representatives and Georgia Senate will be referred to respectively as "House" and "Senate."

[3] The district court took judicial notice of the 2000 Rules of the Georgia House of Representatives and the 2000 Rules of the Georgia Senate. *DeJulio v. Ga.*, 127 F. Supp.2d 1274, 1284 (N.D. Ga. 2001).

legislation, which is legislation that applies to a specific city, county, or special district, comprises a large part of the bills introduced and enacted by the General Assembly each year.[4] Because of this volume, the House and the Senate have adopted local delegations for the consideration of local legislation. Each county, municipality, or other jurisdiction has a local delegation and any legislator whose district encompasses territory within a specific city or county is a member of the local delegation for that entity.

The local delegations make recommendations to the House and Senate standing committees, which then recommend local legislation to the entire body.[5] A local bill must receive the requisite majority from the local delegation to be reported favorably out of the standing committees with a "do pass" recommendation. Absent local delegation rules filed in the House Standing Committee, unanimous support from the local delegation is required for the committee to report the legislation favorably to the full House with a "do pass" recommendation.[6] Similarly, Senate Rule 187(u) provides that local legislation must be

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[4] Local legislation is introduced to change city boundaries, create local authorities, or make other changes that apply only to the particular political subdivision named in a bill. Approximately one-third of all legislation enacted during the General Assembly's 2000 session was local legislation. *DeJulio,* 127 F. Supp.2d at 1280. In 1999, local legislation constituted 52.5% of all enacted legislation. *Id.*

[5] The standing committees are the State Planning and Community Affairs Committee in the House and the State and Local Government Operations Committee in the Senate. *Id.* at 1280-81.

[6] House Rule 11 provides that a majority of the representatives whose districts lie within a political subdivision may file with the State Planning and Community Affairs Committee their own local rules for consideration of local legislation.

approved by a majority of the senators who represent the locality in question. If the local delegation is equally divided on the proposed legislation, however, the committee then considers the legislation on its own merits and can report it with either a "do pass" or "do not pass" recommendation.

If local legislation has received the requisite number of signatures of representatives and senators whose districts lie partially or wholly within the locality which the legislation affects, it is ordinarily passed on an uncontested basis as a matter of local courtesy.[7] The underlying assumption of local courtesy is that the bill affects only a certain city or county, and, therefore, representatives and senators of other districts should defer to that local delegation's judgment. Local courtesy is a custom, however, and is not provided for in either the House or Senate rules. Should a member of the House or Senate choose to challenge local legislation on the floor, local courtesy is not enforced.[8]

It is undisputed that these challenges seldom happen. The district court noted that "in practice, the local delegations propose all local legislation; and this legislation typically, but not always, is 'rubber-stamped' by the full General Assembly without further discussion or debate."

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[7] Both the House and Senate permit numerous local bills to be voted on by the full body through a "local consent calendar" that contains uncontested local legislation. *DeJulio,* 127 F. Supp.2d at 1281.

[8] Senate Rule 113(e) provides that three senators, only one of whose district must lie within the political subdivision directly affected, may have a particular local bill removed from the local consent calendar by objecting to it in writing.

DeJulio, 127 F. Supp.2d at 1281. For local legislation to become law, however, the Governor must sign it within forty days from the end of the legislative session. *Id.*

Plaintiffs-appellants, Tiberio P. DeJulio and Eva C. Galambos (hereinafter "Voters"), filed a voting rights action pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment of the United States Constitution, and an action to enforce the provisions of the Fourteenth Amendment and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, as amended. Voters alleged that the current procedures for enactment of local legislation of the General Assembly constituted a violation of the "one person, one vote" standard.[9] Additionally, Voters argued that the changes in the General Assembly's internal rules are subject to the preclearance requirement of Section 5 of the Voting Rights Act. *DeJulio,* 127 F. Supp.2d at 1282. The district court granted summary judgment to the appellees and determined that: (1) the "one person, one vote" requirement did not apply to the General Assembly's local legislative delegations, and (2) the changes in internal rules and procedures by which the General Assembly enacted local legislation were not subject to the Voting Rights Act's preclearance requirements. *Id.* at 1302. Voters appeal this judgment on both issues.

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[9] Voters' argument is based on the undisputed population data for Georgia's 159 counties broken down according to the House and Senate Districts located in those counties. Voters allege that a House or Senate member with constituents in the county have one vote on local legislation while another House or Senate member with fewer constituents in the county also has one vote on local legislation affecting the county.

II. DISCUSSION

We review a district court's grant of summary judgment *de novo,* apply the same standard as the district court, and review all facts and reasonable inferences in the light most favorable to the nonmoving party. *Allison v. McGhan Med. Corp.,* 184 F.3d 1300, 1306 (11th Cir. 1999). Summary judgement is appropriate when "the pleadings, depositions and answers to interrogatories, and admissions on file, together with the affidavits, if any," show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Celotex v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 2553 (1986) (quoting Fed.R.Civ.P. 56(c)).

A. *"One Person, One Vote"*

Because this issue is better determined by the state, the district court should have invoked *Pullman* abstention.[10] Under *Pullman* abstention, a federal court will defer to "state court resolution of underlying issues of state law." *Harman v. Forssenius,* 380 U.S. 528, 534, 85 S.Ct. 1177, 1181 (1965). By abstaining in such cases, federal courts "avoid unnecessary friction in federal-state relations, interference with important state functions, tentative

[10] We are raising abstention *sua sponte, Bellotti v. Baird,* 428 U.S. 132, 143 n.10, 96 S.Ct. 2857, 2864 n.10 (1976), and have determined *de novo* the propriety of abstention in this case. We join other circuits in this approach. *See Columbia Basin Apartment Ass'n. v. City of Pasco,* 268 F.3d 791 (9th Cir. 2001); *Robinson v. City of Omaha, Nebraska,* 866 F.2d 1042 (8th Cir. 1989); *Grimes v. Crown Life Ins. Co.,* 857 F.2d 699 (10th Cir. 1988); *Waldron v. McAfee,* 723 F.2d 1348 (7th Cir. 1983).

decisions on questions of state law, and premature constitutional adjudication." *Id.* at 534, 85 S.Ct. at 1182.

Two criteria have been established for application of the *Pullman* doctrine: (1) the case must present an unsettled question of state law, and (2) the question of state law must be dispositive of the case or would materially alter the constitutional question presented. *Duke v. James,* 713 F.2d 1506, 1510 (11th Cir. 1983). A question of state law is "unsettled" if it is "*fairly subject* to an avoiding construction," which means that the state court can render a fair interpretation of state law that comports with the Constitution. *Id.* at 1510.

In considering abstention, we must take into account the nature of the controversy and the importance of the right allegedly impaired. *Siegel v. Lepore,* 234 F.3d 1163, 1174 (11th Cir. 2000) (en banc) (per curiam). Voters in this case allege that the current procedures for enacting local legislation violate the "one person, one vote" requirement of the Fourteenth Amendment. Specifically, Voters contend that their vote is diluted compared to other Fulton County voters whose representatives and senators represent only a portion of Fulton County, but who have an equal vote in Fulton County local delegations.

An alleged denial of voting rights does not automatically trigger federal involvement. *Duncan v. Poythress,* 657 F.2d 691, 697 (5th Cir. Unit B Sept. 1981).[11] The abstention doctrines are not considered rules of law. Rather, they are

[11] Additionally, "[j]ust as an alleged denial of voting rights does not preclude federal abstention, so the absence of pending state proceedings does not mandate federal adjudication." *Duncan,* 657 F.2d at 697.

applied with the exercise of sound discretion based of [sic] the facts of each case. *Hill v. City of El Paso, Texas,* 437 F.2d 352, 356 (5th Cir. 1971).

In this case, we risk interference with valid state procedures and unnecessary federal constitutional adjudication. "How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself." *Highland Farms Dairy v. Agnew,* 300 U.S. 608, 612, 57 S.Ct. 549, 551 (1937). The Georgia Constitution authorizes the General Assembly to create its own rules of procedure. Both the House and Senate have adopted internal procedures for the consideration of local legislation to assist the General Assembly in handling vast quantities of legislation. Whether the local delegations perform governmental functions, which subjects them to the "one person, one vote" requirement, is a fundamental matter of state law that is most appropriate for state court determination. Because the relief sought by Voters regarding the validity of the House and Senate rules may be available under Georgia law, we conclude that the district court should not have decided the merits of the federal constitutional claims presented in this complaint.

The dissent states that no unsettled state law questions are presented in this case. However, the district court never considered deferral to the Georgia courts, affording these courts the first opportunity to address what is purely and peculiarly a state legislative voting procedure. We respectfully suggest that at this juncture it is speculation to conclude that the Georgia courts are not capable of resolving this dispute. Such a resolution on the basis of Georgia law would pretermit the intervention of the federal courts into an area of state sovereignty.

While this is not a traditional "voting dispute" – it is once removed from the familiar dispute – it is, nevertheless manifestly with in [sic] the aegis of that concern. As we have observed:

> Principles of federalism limit the power of federal courts to intervene in state elections, however. The Constitution leaves "the conduct of state elections to the states." *Gamza v. Aguirre,* 619 F.2d 449, 453 (5th Cir.1980). We have cautioned before against excessive entanglement of federal courts in state elections. "The very nature of the federal union contemplates separate functions for the states. If every state election irregularity were considered a federal constitutional deprivation, federal courts would adjudicate every state election dispute . . . ." Id.

Burton v. State of Georgia, 953 F.2d 1266, 1268 (11th Cir. 1992). As I understand the law, "[o]nly in extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation." *Curry v. Baker,* 802 F.2d 1302, 1314 (11th Cir. 1986).

B. *Section 5 of the Voting Rights Act*

Section 5 of the Voting Rights Act requires a jurisdiction covered by the Act to obtain either judicial or administrative preclearance before implementing a new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964."[12] 42 U.S.C. § 1973c

[12] Georgia is a "covered jurisdiction," as are its "political subunits." 28 C.F.R. Part 1 & § 51.6.

(Voting Rights Act of 1965 § 5). If a covered jurisdiction fails to seek preclearance for a proposed voting-law change, a private party injured by that change can bring an action for a declaratory judgement and injunctive relief by alleging that the change is within the scope of Section 5 and that it requires preclearance. *Id.*

In this case, Voters, without identifying specific rule changes, argue that the changes in Rules of the General Assembly are subject to preclearance. The preclearance requirements of the Voting Rights Act apply to legislative internal rule changes in only the most limited of circumstances: (1) changes to the manner of voting; (2) changes to candidacy requirements and qualifications; (3) changes to the composition of the electorate; and (4) changes that affect the creation or abolition of an elective office. *Presley v. Etowah County Commission,* 502 U.S. 491, 493, 112 S.Ct. 820, 823 (1992). In *Presley,* the Court held that changes in the decision-making authority of elected officials are not changes in voting practices or procedures that require preclearance pursuant to Section 5 of the Voting Rights Act. *Id.* at 503, 112 S.Ct. at 829. The change "concerns only the internal operations of an elected body and the distribution of power among officials, and, thus, has no direct relation to, or impact on, voting." *Id.* at 492, 112 S.Ct. at 823. Hence, the district court correctly determined that preclearance requirements did not apply to changes in internal rules and procedures by which the General Assembly enacted local legislation applicable to a specific city, county, or district.

III. CONCLUSION

The district court noted, "[i]t . . . is not the province of the federal judiciary in the name of the equal protection of the laws to interfere in such internal political matters as how a state legislature seeks to reach consensus on local legislation." *DeJulio,* 127 F. Supp.2d at 1302. As we have explained, the district court should have abstained from deciding whether the "one person, one vote" requirement applied to local legislative delegations. Furthermore, the district court correctly decided that procedural changes to the internal Rules of the General Assembly are not subject to the preclearance requirement of the Voting Rights Act.

Accordingly, we **REVERSE** in part and **AFFIRM** in part the judgment of the district court and **REMAND** for further proceedings consistent with this opinion.

COX, Circuit Judge, concurring in part and dissenting in part:

I agree that summary judgment was appropriate on the Voting Rights Act claims. However, I do not agree that the district court should have invoked *Pullman* abstention on the federal "one person, one vote" equal protection claims. Since, in my view, there are no unsettled questions of state law presented in this case, I respectfully dissent from Part II.A. of the court's opinion.

The voters filed a five count complaint in the United States District Court for the Northern District of Georgia. Counts One, Two, and Three allege violations of the Equal Protection Clause of the United States Constitution. (R.2-12 at 9-47.) Counts Four and Five allege violations of the Voting Rights Act, 42 U.S.C. § 1973. (R.2-12 at 47-51.) There are no state law claims.

The State of Georgia vigorously attacked the suit and raised several defenses. However, throughout the litigation, Georgia never suggested that abstention was appropriate and never once cited *Pullman*.

On summary judgment, the district court found that the voters had standing, *see Dejulio v. Ga.*, 127 F. Supp. 2d 1274, 1290-91 (N.D. Ga. 2001), that this case did not implicate the political question doctrine, *see id.* at 1292, and that some parties were improper, *see id.* at 1292-94. The district court also concluded that the local delegations did not violate the "one person, one vote" principle because the local delegations have no final authority, *see id.* at 1297, and that internal changes in the local legislation process were not subject to preclearance under the Voting Rights Act, *see id.* at 1301. But never in its lengthy and thorough opinion did the district court mention abstention.

On appeal, neither party argued for abstention in its brief. Indeed, *Pullman* abstention was first mentioned at oral argument in a question posed by this court.

Since *Pullman* abstention was never raised or argued, I would not bother to raise it sua sponte in this case. However, once *Pullman* abstention is raised, it should quickly be rejected since this case turns solely on an unavoidable constitutional question. To put it plainly, there is no unsettled question of state law presented in this case. Moreover, there is no interpretation of state law that would allow us to avoid the constitutional question presented in this case. Thus, *Pullman* abstention is inappropriate.

Pullman abstention is an "extraordinary and narrow exception" to the exercise of federal jurisdiction, available only in "exceptional circumstances." *County of Allegheny v.*

Frank Mashuda Co., 360 U.S. 185, 187, 79 S. Ct. 1060, 1063 (1959). In this circuit, *Pullman* abstention is appropriate only when both of the following circumstances are present: (1) the case presents an unsettled question of state law; and (2) the question of state law is dispositive of the case or would materially alter the constitutional question presented. *See Siegel v. LePore*, 234 F.3d 1163, 1174 (11th Cir. 2000) (en banc). Even when these circumstances are present, *Pullman* abstention is still not required; it remains discretionary, to be invoked only "when the question of state law can be fairly interpreted to avoid adjudication of the constitutional question." *Id.*

The complaint in this case contains five counts that raise federal claims and questions of federal law. There are no claims under Georgia law.[1] Though the lack of state law claims does not end the abstention inquiry, *see Reid v. Bd. of Educ.*, 453 F.2d 238, 242 n.7 (2d Cir. 1971), the lack of unsettled state law questions does. In this case, there are no unsettled state law questions. The Georgia General

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[1] The only conceivable state claim would be an equal protection claim under the Georgia Constitution. *See* Ga. Const. art. 1, § 1, ¶ 2, cl. 2 ("No person shall be denied the equal protection of the laws."). Under Georgia law, the equal protection clause of the Georgia Constitution is considered identical to the equal protection clause of the Fourteenth Amendment. *See Nodvin v. State Bar of Ga.*, 544 S.E.2d 142, 145 (Ga. 2001) ("Because the protection provided in the Equal Protection Clause of the United States Constitution is coextensive with that provided in Art. 1, Sec. 1, Par. 2, of the Georgia Constitution of 1983, we apply them as one.") Since these clauses are mirror images, we should not ignore a federal claim under one just because a state claim is available under the other. *See Examining Bd. of Eng'rs v. Flores de Otero*, 426 U.S. 572, 598, 96 S. Ct. 2264, 2279 (1976); *Fields v. Rockdale County*, 785 F.2d 1558, 1561 (11th Cir. 1986); *Henley v. Herring*, 779 F.2d 1553, 1556 (11th Cir. 1986).

Assembly created the local delegations through its own internal procedures, and there is nothing unclear about these procedures or their application. Simply put, there is no Georgia law that the Georgia courts could construe to avoid adjudicating the "one person, one vote" claims raised in this case.

The success of the "one person, one vote" claims turns, as both parties and the majority acknowledge, on whether Georgia's local delegations perform "governmental functions." The resolution of this "governmental functions" issue ultimately depends on federal equal protection law, not on Georgia law. *See Ramsbottom Co. v. Bass/Zebulon Rds. Neighborhood Ass'n,* 546 S.E.2d 778, 779-80 (Ga. 2001); *Rich v. State,* 227 S.E.2d 761, 766-67 (Ga. 1976); *Grimes v. Clark,* 173 S.E.2d 686, 689-91 (Ga. 1970) (each applying only federal principles in its "one person, one vote" governmental functions analysis). We are, therefore, squarely confronted with a constitutional question whose adjudication cannot be avoided by interpreting state law.

Instead of pointing to an unsettled question of state law, the majority states that Georgia's courts should have the first opportunity to address its legislative procedures. But this statement flies in the face of *Pittman v. Cole,* 267 F.3d 1269 (11th Cir. 2001), where we explicitly stated that *Pullman* abstention should not be invoked so that state courts can "take the first crack at the federal constitutional issues." *Id.* at 1287. I do not doubt that Georgia's courts are fully capable of resolving the constitutional question in this case. But I believe, as the court in *Pittman* believed, that "[a] federal court must grapple with difficult constitutional questions that confront it squarely." *Pittman,* 267 F.3d at 1286. We should address the constitutional question presented in this case.

While adjudicating this case might interfere with Georgia's political procedures, it would not be the first time that a federal court has interfered with an unconstitutional state political procedure. *See, e.g., Rice v. Cayetano,* 528 U.S. 495, 120 S. Ct. 1044 (2000) (striking down voting requirements for the Office of Hawaiian Affairs); *Bd. of Estimate v. Morris,* 489 U.S. 688, 109 S. Ct. 1433 (1989) (holding New York City borough presidents' automatic board vote unconstitutional); *Hadley v. Junior Coll. Dist.,* 397 U.S. 50, 90 S. Ct. 791 (1970) (finding unequal distribution of junior college trustees unconstitutional); *Driskell v. Edwards,* 518 F.2d 890, 893 (5th Cir. 1975) (allowing federal court inquiry into the structure of Lousiana's [sic] constitutional convention). Such is the duty imposed on us by the United States Constitution, *see* U.S. Const. art. III, § 2; U.S. Const. art. VI, cl. 2, and the United States Congress, *see* 28 U.S.C. § 1331 (1993). In this case, a group of voters claims that the "one person, one vote" principle of the Equal Protection Clause of the United States Constitution has been violated. A federal court should adjudicate these federal constitutional claims.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TIBERIO P. DEJULIO and EVA C. GALAMBOS, on behalf of themselves and all others similarly situated, Plaintiffs, v. STATE OF GEORGIA, et al., Defendants.	CIVIL ACTION FILE NO. 1:00-CV-273-TWT

ORDER

(Filed Jan. 26, 2001)

This is a voting rights action brought pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment to the Constitution of the United States, and the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.*, as amended. It is before the Court on Defendants' Motion to Dismiss [Doc. 5] pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiffs' Motion for Partial Summary Judgment [Doc. 13], Plaintiffs' Motion for Certification of Class Action [Doc. 17], and Defendants' Motion to Dismiss the Amended Complaint [Doc. 20].

I. BACKGROUND

The doctrine of "one person, one vote" is now a bedrock principle of federal constitutional law. This case is the latest chapter of a long saga in which this doctrine has been used to challenge political institutions in Georgia. A brief historical review will put this case in context. As far

back as the first Georgia Constitution in 1777, Georgia apportioned legislative seats on a county-unit basis. Each county or group of counties was allocated one or more representatives. Larger counties generally received more representatives, but not proportionate to their population. With respect to the Georgia House of Representatives, the Constitution of 1877 and later the Constitution of 1945 provided that the six most populous counties would have three representatives each, the twenty-six next largest counties would have two representatives each, and the remaining counties (ultimately 127), would have one representative each. With respect to the Georgia Senate, each county initially had one senator. Later, Senate districts were adopted that generally consisted of three contiguous counties. In these districts, the Senate seat rotated each two years among the three counties.[1] An exception to this system was made for the State's two largest counties. Fulton County was a Senate district by itself. Chatham and Effingham counties constituted a two-county Senate district.

What became known as the "county-unit system" also was used to determine the winning candidate in statewide primary elections, first based on Georgia Democratic Party rules, and eventually as a result of the Neill Primary Act

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[1] *See* James F. Cook, *Carl Sanders: Spokesman of the New South* 59 (1993) ("Under the existing system of rotation, it was virtually impossible for a senator to remain in office long enough to amass much political clout. Only the senator from Fulton County could succeed himself; all the others had rotating districts. Thus, the Senate was a lame duck body on the day it was elected, and the House, where seniority prevailed, usually overshadowed it.").

of 1917. The county-unit system was used for every statewide Democratic primary contest except for the election of 1908 when Governor Hoke Smith temporarily succeeded in repealing it.[2] In general, the county-unit system declared the candidate with a majority of the county units as the winner of the primary election. County units were awarded on a winner-take-all basis for each individual county. The candidate who won a plurality of the vote in a county received two votes multiplied by the number of representatives that county had in the Georgia House of Representatives.

For statewide races, the county-unit system had two principal effects. First, it effectively nullified the votes cast for all candidates except the winning candidate within a county, because the candidate who won the popular vote of a county received all county-unit votes for that county. This meant that a candidate could win a statewide primary election without anything close to a majority of the votes. For example, in 1954, Marvin Griffin won a majority of the county-unit votes and the Democratic Party's nomination for Governor with only thirty-six percent of

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[2] The county-unit system was such a potent political institution that its repeal by Governor Smith and his Progressive followers created a backlash that, in part, made Smith the first incumbent governor to lose reelection since the Constitution of 1877's enactment. Numan V. Bartley, *The Creation of Modern Georgia* 161 (2d ed. 1990); C. Vann Woodward, *Tom Watson: Agrarian Rebel* 339 (2d ed. 1973); Dewey W. Grantham, Jr., *Hoke Smith and the Politics of the New South* 191 (1958). Curiously, even the editor of the *Atlanta Constitution* voiced support for the county-unit system, saying that its abrogation "is by all odds the most revolutionary measure that has ever been thrust upon the people of Georgia," "will destroy rural influence," and was "forced down the throats of the people." Bartley, *supra*, at 161-62.

the popular vote.[3] Second, the county-unit system underrepresented votes from the urban areas of the state. This disparity increased over time as the cities grew, and generally precluded the election to statewide office of individuals from urban areas.[4] By 1946 a single vote for a statewide political candidate cast in sparsely populated Chattahoochee County counted 107 times more than a vote cast in the same election in urban Fulton County.[5] In the General Assembly, the county-unit system led to severe malapportionment which dramatically increased in the decades after World War II. By 1960 legislators representing less than one-fourth of the population commanded clear majorities in both the Georgia House of

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[3] James F. Cook, *The Governors of Georgia, 1754-1995* 260 (1995).

[4] *See* Ivan Allen, Jr., *Mayor: Notes on the Sixties* 28 (1971) ("I eventually reached a point where I thought I might be a candidate for governor myself, and in 1958 began feeling out my possibilities. . . . But a simple fact of life in those days was that because the rest of Georgia was so much more conservative than Atlanta and because there was a county-unit election system to give the rural counties more strength than the urban areas, no Atlantan stood a chance of being elected governor.").

[5] *See* V.O. Key, *Southern Politics in State and Nation* 119-24 & tbl. 13 (1984) (1949) (stating that 14,092 votes were cast per unit vote in Fulton County in 1946, whereas only 132 votes were cast per unit vote in Chattahoochee County).

Representatives and Georgia State Senate.[6] The conservative, rural politicians and legislators who were its beneficiaries had no incentive whatsoever to reform the system.[7]

For the first sixty years of the twentieth century, the traditional legal conclusion was that such electoral malapportionment was a nonjusticiable political question that could not be redressed by a federal court. This traditional view, however, met its demise in March 1962 when the Supreme Court of the United States held in *Baker v. Carr,* 369 U.S. 186, 188 (1962), that the method by which the State of Tennessee apportioned its state legislature was a justiciable controversy that the federal courts could

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[6] *See Toombs v. Fortson,* 205 F.Supp. 248, 251 (N.D. Ga. 1962) (taking judicial notice of representation breakdowns based on 1960 Census data). It should be emphasized that legislative malapportionment was not unique to Georgia. In Florida, a majority of the legislature represented only one-eighth of the population. In Alabama, Oklahoma, and Tennessee, a majority of legislators represented about one-fourth of the population. The least imbalanced legislatures were those in Arkansas, Kentucky, and Virginia, where rural voters enjoyed only twice the representation of urban voters. *See* Numan V. Bartley, *The New South, 1945-1980* 167 (1995) (citing Malcolm E. Jewell, *State Legislatures in Southern Politics,* Journal of Politics, vol. XXVI (1964)).

[7] One Georgia governor proclaimed that "Georgia's two greatest traditions [are] segregation and the county-unit system." Kenneth Coleman, ed., *A History of Georgia* 395 (2d ed. 1991). Another governor, Eugene Talmadge, bragged that he did not campaign in counties with streetcars. He still won seven of the ten statewide primaries he entered during his political career. *See generally* William Anderson, *The Wild Man from Sugar Creek* (1975) (detailing Talmadge's political career). His son Herman, himself a governor and United States senator, later reminisced that "[s]ince Papa and I derived much of our support from the rural areas, we thought the [county-unit] system was just fine." Herman E. Talmadge, *Talmadge: a Political Legacy, a Politician's Life* 105 (1987).

address. One hour and seventeen minutes after the Supreme Court rendered its decision in *Baker v. Carr,* voters in Georgia filed suit in this Court challenging the constitutionality of the county-unit system in statewide primaries.[8] A month later, a three-judge district court held, in a decision authored by then-Fifth Circuit Judge Griffin Bell, that the Georgia county-unit system as applied to statewide primaries was unconstitutional. The court found "invidious discrimination" in the county-unit system's unequal weighting of votes and enjoined the State from using the system in the 1962 primaries. *Sanders v. Gray,* 203 F.Supp. 158, 170 (N.D. Ga. 1962). In due course, the Supreme Court upheld the grant of the injunction, stating that "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing – one person, one vote." *Gray v. Sanders,* 372 U.S. 368, 809 (1963).

A second action also was filed in this Court challenging the constitutionality of the apportionment of the Georgia General Assembly. Shortly after the District Court decision in *Sanders v. Gray,* a three-judge district court, speaking through Judge Elbert Tuttle of the Fifth Circuit, held that "so long as the Legislature of the state of Georgia does not have at least one house elected by the people of the State apportioned to population, it fails to meet constitutional requirements." *Toombs v. Fortson,* 205 F.Supp. 248, 257 (N.D. Ga. 1962), *vacated in part, Fortson*

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[8] Frederick Allen, *Atlanta Rising* 115 (1996).

v. Toombs, 379 U.S. 621, 622 (1964).[9] Within two years after *Toombs v. Fortson* was decided by this Court, the Supreme Court firmly extended the "one person, one vote" doctrine to the area of legislative apportionment, holding that equal protection requires seats in *both* houses of a bicameral state legislature to be apportioned according to population. *Reynolds v. Sims,* 377 U.S. 533, 568 (1964).

> Full and effective participation by all citizens in state government requires . . . that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

Id. at 565. "One person, one vote" today is a bedrock constitutional principle that undergirds our system of representative democracy.

Based on the Supreme Court precedent of *Reynolds v. Sims* and its progeny, Plaintiffs have filed this action against the State of Georgia, its state legislative bodies, the Fulton County House and Senate delegations, other unspecified local legislative delegations, the Governor, the Lieutenant Governor, the Speaker of the House, and other state government officials alleging that the State once again is violating the "one person, one vote" constitutional

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[9] The Georgia reapportionment cases had a profound effect upon the political landscape at all levels of government. *See* Jimmy Carter, *Turning Point: A Candidate, a State, and a Nation Come of Age* 27 (1992) ("I didn't know it then, but the outcome of these two cases would transform the political scene in Georgia and would shape the future of my life."); Zell Miller, *The Mountains Within Me* 130 (1985) ("[A]fter reapportionment ended the rotation system, I decided to run for reelection to the Senate.").

requirement. The gravamen of Plaintiffs' Amended Complaint is that the method by which the Georgia General Assembly enacts "local legislation" violates the principle of "one person, one vote." Local legislation is legislation that applies to a specific city, county, or special district. Major changes in local governments' governance must be approved by the General Assembly because local governments are creations of the State. Local legislation is introduced to create or abolish cities, change city boundaries, alter forms of local government, create local authorities or special districts, and make other changes that apply only to the particular political subdivision named in the bill. Local legislation typically comprises a large portion of the bills introduced in and enacted by the General Assembly each year. Approximately one-third of all legislation enacted by the General Assembly during its 2000 session was local legislation. In the 1999 session, local legislation constituted 52.5% of all enacted legislation.

To handle this volume of local legislation effectively and efficiently, the Georgia House of Representatives and Georgia State Senate have adopted internal procedures for the consideration of local legislation by their respective bodies. For each county, municipality, or other jurisdiction, there is a "local delegation" for that jurisdiction. The local delegation for each jurisdiction consists of all members of that house who represent any portion of the jurisdiction. These local delegations make recommendations to the House and Senate standing committees which recommend local legislation to the entire body.

Local legislation introduced in the House of Representatives is assigned to the State Planning and Community Affairs Committee after its first reading on the House

floor. House Rule 11 provides that a majority of the representatives whose districts lie within a political subdivision may file with the State Planning and Community Affairs Committee their own local rules for consideration of local legislation. The Fulton County House Delegation, for example, has filed its own rules that require a simple majority vote of the members in attendance, if a quorum is present, for the delegation to support a local bill. Absent local delegation rules filed with the State Planning and Community Affairs Committee, unanimous support from the local delegation is required for the committee to report local legislation favorably to the full House with a "do pass" recommendation.

Similarly, local legislation introduced in the Senate is assigned to the State and Local Government Operations Committee after its first reading on the Senate floor. Senate Rule 187(u) provides that local legislation in the Senate generally must be approved by a majority of the senators who represent the locality in question. By custom and practice – although there is no specific Senate rule – the Senate has permitted and respected the right of local delegations to adopt rules for consideration of their own local legislation. The Atlanta/Fulton Senate Delegation, for example, has adopted local rules that require a simple majority vote of the members present, if there is a quorum, for the delegation to support a local bill. Regardless of whether the procedures followed are those spelled out in the Senate Rules or a local delegation's own rules, a local bill must receive the requisite majority from the local delegation to be reported favorably out of the State and Local Government Operations Committee with a "do pass" recommendation. If the local Senate delegation is equally divided, the bill nevertheless may be favorably reported to

the full Senate by the State and Local Government Operations Committee following consideration of the bill on the merits.

Although local legislation is debated within a local delegation, it seldom is debated on the floor of the House or Senate. To conserve the limited time of a forty-day legislative session and because local legislation seldom is challenged on the floor, the House and Senate both permit numerous local bills to be voted on each day by the full body through a "local consent calendar," a calendar that contains uncontested local legislation. Most local bills with support of the requisite majority of the local delegation are placed on the local consent calendar and passed by the full House and Senate without any opposition from the floor pursuant to a tradition of "local courtesy." The assumption that underlies local courtesy is that when a local delegation agrees on the need for local legislation that affects a city or county alone, other representatives and senators should defer to its judgment and support the bill, knowing that the same courtesy will be extended to them on their local legislation. Local courtesy, however, is only a custom. It is not provided for in either the House or Senate rules and cannot be enforced should a member choose to challenge local legislation on the floor of the House or Senate. Also, Senate Rule 113(e) specifically provides that three senators, only one of whose district must lie within the political subdivision directly affected, may have a particular local bill removed from the local consent calendar by objecting to it in writing. Nevertheless, such challenges seldom happen, and it is undisputed that, in practice, the local delegations propose all local legislation; and this legislation typically, but not always, is "rubber-stamped" by the full General Assembly without further discussion or

debate. Following enactment by both houses of the General Assembly, local legislation must be signed by the Governor within forty days following the end of the legislative session to become law.

The named Plaintiffs, Tiberio P. DeJulio and Eva C. Galambos, bring this action as representatives of two putative classes of Plaintiffs: (1) all Georgia voters whose vote with respect to local legislative matters allegedly is diluted by the existing local legislation scheme; and (2) all Georgia voters who reside in unincorporated Fulton County whose vote with respect to local legislative matters allegedly is diluted by the existing local legislation scheme. Defendants are the State of Georgia, the Georgia House of Representatives, the Georgia State Senate, various county House and Senate delegations, and various individual Defendants who are officials of the State of Georgia allegedly involved in how the State enacts local legislation. The individual Defendants are Roy E. Barnes, in his official capacity as Governor of Georgia; Mark F. Taylor, in his official capacity as Lieutenant Governor of Georgia and President of the Georgia State Senate; Thomas B. Murphy, in his official capacity as Speaker of the Georgia House of Representatives; James "Billy" McKinney, in his official capacity as Chairperson of the Fulton County House Delegation; and David Scott, in his official capacity as Chairperson of the Fulton County Senate Delegation. The individual county House and Senate Delegations listed as Defendants are the Fulton County House Delegation, the Fulton County Senate Delegation, and "unknown 1-158 Doe County House and Senate Delegations," reflecting legislative delegations for the 158 Georgia counties other than Fulton County.

Plaintiffs essentially raise two claims. First, they challenge as an unconstitutional infringement of equal protection the procedures and customs by which the Georgia General Assembly considers local legislation. It is these procedures that Plaintiffs contend violate the "one person, one vote" requirement. They contend that their vote is diluted in comparison to other Fulton County voters whose senators and representatives represent only a small portion of Fulton County ("split districts"), but who have an equal vote in the Fulton County local delegation. They also assert an equal protection claim because Atlanta legislators vote on local legislation affecting unincorporated Fulton County, but not vice versa. Second, Plaintiffs contend that the rules of the Fulton County House and Senate Delegations and other unnamed county delegations have not been precleared by the Attorney General of the United States or the United States District Court for the District of Columbia as required by the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.*, as amended.

As support for their argument that each legislator's vote on local legislation is not equal from a representation standpoint, Plaintiffs have submitted 1990 decennial census population data compiled by the Reapportionment Services Unit of the Georgia General Assembly. Plaintiffs allege that in forty-seven counties a House member with constituents in the county has one vote on local legislation while another House member with fewer constituents in the county also has one vote on local legislation affecting the county. Plaintiffs allege that in twenty-one counties a senator with constituents in the county has one vote on local legislation while another senator with fewer constituents in the county also has one vote on local legislation affecting the county. Overall, Plaintiffs allege that

voters in fifty-three of Georgia's 159 counties have been denied equal protection by the method in which the General Assembly considers local legislation. Illustrative of these allegations is the population data compiled for Fulton County.

Senate District	Fulton County Residents
34	6,848
35	109,880
36	110,151
38	105,761
39	110,691
40	111,380
48	5,915
56	88,325

Each senator has one vote on matters of local legislation. Similar data for the Fulton County delegation in the House of Representatives is as follows:

House District	Fulton County Residents
41	34,368
42	37,316
43	35,604
44	36,985
45	37,150
46	35,360
47	37,015
48	37,711

49	37,033
50	34,846
51	32,239
52	35,120
53	36,999
54	35,980
55	34,663
56	36,312
57	36,075
58	37,775

It is apparent that there are fewer split districts in the Fulton House delegation than in the Senate delegation. Nevertheless, one split district does exist (House District 51, with 14.7% of its population coming from neighboring Cobb County), and each of the eighteen Fulton House members has one vote on matters of local legislation.

Plaintiffs seek declaratory relief from this Court to the effect that the current procedures for enactment of local legislation of the Georgia General Assembly are unconstitutional. They seek injunctive relief that would enjoin the State of Georgia from enacting any further local legislation until the adoption of procedures that do not violate the Fourteenth Amendment. Plaintiffs also seek a declaratory judgment that the Rules of the Fulton County House Delegation and the Atlanta/Fulton County Senate Delegation are unconstitutional; and injunctive relief enjoining the enactment of all local legislation pertaining to the City of Atlanta and Fulton County until the delegation rules are restructured in a manner that does not violate the Fourteenth Amendment. Finally, Plaintiffs seek a ruling

that the rules of the Fulton County House Delegation, the Atlanta/Fulton County Senate Delegation, and other unnamed county House and Senate delegations violate the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.*, as amended, because they were not precleared by the Attorney General of the United States or approved by the United States District Court for the District of Columbia.

Defendants have responded with a Motion to Dismiss the original Complaint and a subsequent Motion to Dismiss Plaintiffs' Amended Complaint. Plaintiffs have filed a Motion for Partial Summary Judgment, arguing that they are entitled to relief as a matter of law on Counts I, II, and III of their Amended Complaint, the counts that relate to the "one person, one vote" Equal Protection Clause claim. The Court previously entered an Order converting Defendants' Motion to Dismiss into a Motion for Summary Judgment. Because this case involves no disputed issues of genuine material fact, judgment by the Court as a matter of law as to the merits is appropriate.

II. STANDARD OF REVIEW

A complaint should be dismissed pursuant to Rule 12(b)(6) only where it appears beyond doubt that no set of facts could support the plaintiff's claims for relief. Fed. R. Civ. P. 12(b)(6); *Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Linder v. Portocarrero*, 963 F.2d 332, 334 (11th Cir. 1992). In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the plaintiff. *Quality Foods de Centro America, S.A. v. Latin American Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 994-95 (11th Cir. 1983).

Notice pleading is all that is required for a valid complaint. *Lombard's, Inc. v. Prince Mfg., Inc.*, 753 F.2d 974, 975 (11th Cir. 1985). Under notice pleading, the plaintiff need only give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. *Id.*

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the nonmovant. *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 158-159 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). The burden then shifts to the nonmovant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

III. DISCUSSION

A. DEFENDANTS' MOTION FOR JUDICIAL NOTICE

Defendants have filed a Motion for Judicial Notice [Doc. 6] pursuant to Fed R. Evid. 201. The Court previously entered an Order granting the motion without explanation. (Order, December 26, 2000.) [Doc. 35] Defendants request that the Court take judicial notice of the 2000 edition of the Rules of the Georgia House of Representatives and the 2000 edition of the Rules of the Georgia State Senate. Although a court *may* take judicial notice whether requested or not, a "court *shall* take judicial

notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(c)-(d) (emphasis added). "[A] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Judicial notice "may be taken at any stage of the proceeding." Fed. R. Evid. 201(f).

After careful review, the Court concluded that it should take judicial notice of the Georgia House and Senate Rules. It is without dispute that the Georgia State Senate and Georgia House of Representatives have adopted and published the rules that Defendants ask the Court to judicially notice. This lack of dispute is reflected in Plaintiffs' failure to respond in opposition to Defendants' motion. Because the Georgia House and Senate Rules meet the requirements of Fed. R. Evid. 201, the Court takes judicial notice of them for the purposes of this action.

B. CITY OF ATLANTA'S MOTION TO PARTICIPATE AS AN AMICUS CURIAE

The City of Atlanta has filed an amicus curiae brief, which it requests that the Court consider in deciding the case. The Court previously entered an Order granting the motion without explanation. (Order, December 26, 2000.) [Doc. 35] A provision of the Federal Rules of Appellate Procedure governs the filing of amicus briefs in cases on appeal. Fed. R. App. P. 29. There, however, exists no parallel provision in the Federal Rules of Civil Procedure or this Court's Local Rules to regulate the filing of an amicus brief in this District Court. The decision whether

to allow a non-party to participate as an amicus curiae is solely within the broad discretion of the Court. *Resort Timeshares Resales, Inc. v. Stuart*, 764 F. Supp. 1495, 1500 (S.D. Fla. 1991); *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996).

The Court concludes that the City of Atlanta's motion should be granted. In *Mir v. Smith*, 521 F. Supp. 446, 450 (N.D. Ga. 1981), Judge Shoob of this Court concluded that the State of Florida had "great concern" that reliable sponsors be found for released Cuban detainees, particularly those who resettle in Florida. Accordingly, Judge Shoob allowed the State of Florida to participate in the case as an amicus curiae. *Id.*; *see also Bloodworth v. Oxford Village Townhouses, Inc.*, 377 F. Supp. 709, 712 (N.D. Ga. 1974) (permitting Atlanta Legal Society to participate as amicus curiae in case concerning housing cooperative project established pursuant to federal housing act). The City of Atlanta has an interest in how the Georgia General Assembly enacts local legislation. Additionally, Plaintiffs do not dispute Atlanta's interest in this litigation and do not explicitly oppose the filing of the amicus brief. *See* Plaintiffs' Response to Amicus Brief of City of Atlanta, at 2, 4 ("[The] City of Atlanta's interest in the outcome of the present litigation is described in Counts II and III of Plaintiffs' Complaint," and "[The] City of Atlanta has a profound interest in maintaining the status quo."). [Doc. 33] Because the City of Atlanta has demonstrated sufficient interest in this litigation, its Motion to Participate as an Amicus Curiae [Doc. 32] was granted.

C. EQUAL PROTECTION

1. INTRODUCTION

The Constitution of the United States guarantees to every state a republican form of government. U.S. Const. art IV, § 4. Pursuant to this constitutional authority, the State of Georgia has adopted its own constitution which vests legislative authority in a General Assembly consisting of two bodies, the Georgia House of Representatives and the Georgia State Senate. Ga. Const., art. III, § 1, ¶ 1. The Georgia House of Representatives consists of 180 members, and the Georgia State Senate consists of 56 members. Ga. Const., art. III, § 2, ¶ 1(a)-(b). The members of both houses are apportioned among representative districts of the state in accordance with the "one person, one vote" constitutional requirements of *Reynolds v. Sims*, 377 U.S. 533, 565 (1964), and subsequent cases. Ironically, it is the requirement of "one person, one vote" that results in districts that cross county lines and districts that contain fewer county residents than other districts. Under the county-unit system, every vote within the county unit was equal.

The Georgia Constitution explicitly vests in the General Assembly the power and authority to determine its own rules of procedure. Ga. Const., art. III, § 4, ¶ 4. This authority specifically includes enacting procedures for consideration of local legislation. Ga. Const., art. III, § 5, ¶ 8. Both the Georgia House of Representatives and Georgia State Senate have exercised this constitutional authority by adopting their own rules of procedure, including rules that govern the consideration of local legislation. *See Rules of the House of Representatives* (2000) (providing rules of procedure of the Georgia House of Representatives); *Rules of the Georgia State Senate* (2000) (providing

rules of procedure of the Georgia House of Representatives); *Rules of the Georgia State Senate* (2000) (providing rules of procedure for the Georgia State Senate). These rules additionally provide for local delegations and the enactment of local rules to govern those delegations.

Based on these rules, Plaintiffs have filed a Motion for Partial Summary Judgment as to Counts I, II, and III. Plaintiffs contend that the Rules of the Georgia House of Representatives, the Georgia State Senate, the Fulton County House Delegation, the Atlanta/Fulton County Senate Delegation, and other unspecified county House and Senate delegations violate the "one person, one vote" principle of the Fourteenth Amendment's Equal Protection Clause. Defendants have responded that Plaintiffs' suit should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. As mentioned above, the Court previously entered an Order converting Defendants' Motion to Dismiss into a Motion for Summary Judgment with respect to the merits of the case. (Order, December 26, 2000.) [Doc. 35]

2. STANDING

At the outset, Defendants contend that Plaintiffs do not have standing to bring this suit. Standing focuses on whether a litigant is the proper party to bring the lawsuit, not whether the issue itself is justiciable. The doctrine derives from the separation of powers on which our government is founded. *Allen v. Wright*, 486 U.S. 737, 750 (1984). The Supreme Court has set forth an analytical framework for resolving standing issues that comprises both "constitutional" and "prudential" considerations. *See Warth v. Seldin*, 422 U.S. 490, 498-99 (1975); *Harris v.*

Evans, 20 F.3d 1118, 1121 (11th Cir. 1994); *Saladin v. City of Milledgeville*, 812 F.2d 687, 690 (11th Cir. 1987). The constitutional requirements derive from Article III's limitation of federal jurisdiction to those situations where a justiciable "case or controversy" exists between the litigants. *Warth*, 422 U.S. at 498. In order to satisfy this "'irreducible' constitutional minimum," the plaintiff must show that (1) he has suffered an actual or threatened injury (often termed an "injury in fact"), (2) the injury is fairly traceable to the challenged conduct of the defendant, and (3) the injury is likely to be redressed by a favorable ruling. *Saladin*, 812 F.2d at 690; *accord Warth*, 422 U.S. at 498-99.

In addition to these constitutional requirements, the Supreme Court has fashioned three principles of judicial restraint, which have become known as "prudential" considerations. These self-imposed constraints are intended to ensure the proper role of the courts in our tripartite system of government in order to avoid judicial resolution of abstract questions that are more appropriately addressed by the other branches of government or by the states. *Warth*, 422 U.S. at 500. The three prudential considerations are (1) whether the plaintiff's complaint falls within the zone of interests protected by the statute or constitutional provision at issue, (2) whether the complaint raises abstract questions amounting to generalized grievances that are more appropriately resolved by the legislative branches, and (3) whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties. *Harris v. Evans*, 20 F.3d 1118, 1121 (11th Cir. 1994); *Saladin*, 812 F.2d at 690. The Eleventh Circuit has emphasized that, amid consideration of these factors, the central purpose of

the standing requirement is "to ensure that the parties before the court have a concrete interest in the outcome of the proceedings such that they can be expected to frame the issues properly." *Harris*, 20 F.3d at 1121. Similarly, the Supreme Court has articulated the issue as follows:

> Determining standing in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases. Typically, however, the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?

Allen v. Wright, 468 U.S. 737, 752 (1984). In short, the basic question in this case is whether Plaintiffs are adversely affected by the method by which the Georgia General Assembly enacts local legislation.

Plaintiff DeJulio alleges that he is a resident of and registered voter in unincorporated Fulton County; and that he is represented in the Georgia General Assembly by the representative for House District 45 and the senator for Senate District 40. He alleges that his voting strength is diluted by the fact that his representative and senator, who have higher constituent populations within Fulton County than some other Fulton County representatives and senators, nevertheless cast a single vote on local legislation just as the other Fulton County representatives and senators do. For example, he alleges that his Senate

District at the time of the last decennial census in 1990 had a Fulton County population of 111,380, while Senate District 34 had a Fulton County population of only 6,848. Nevertheless, the senators for District 40 and 34 both cast one vote on local legislation. Plaintiff DeJulio also alleges that his voting strength is diluted because his state representative and senator do not vote on matters affecting the City of Atlanta, although representatives and senators from within the City of Atlanta may vote on local legislation that affects only unincorporated Fulton County.

Plaintiff Galambos alleges that she is a resident of and registered voter in unincorporated Fulton County; and that she is represented in the Georgia General Assembly by the representative for House District 43 and the senator for Senate District 56. She alleges that her voting strength is diluted by the fact that her representative and senator, who have higher constituent populations within Fulton County than some other Fulton County representatives and senators, nevertheless cast a single vote on local legislation just as the other Fulton County representatives and senators do. For example, she alleges that her Senate District at the time of the last decennial census in 1990 had a Fulton County population of 88,325, while Senate District 34 had a Fulton County population of only 6,848. Nevertheless, the senators for District 56 and 34 both cast one vote on local legislation. Plaintiff Galambos also alleges that her voting strength is diluted because her state representative and senator do not vote on matters affecting the City of Atlanta, although representatives and senators from within the City of Atlanta may vote on local legislation that affects only unincorporated Fulton County.

Defendants respond by characterizing Plaintiff's alleged injury as only that Plaintiffs "would organize the

General Assembly differently or that they desire for the legislature to more favorably address legislation they favor." (Defendants' Reply to Plaintiffs' Response to Defendants' Motion to Dismiss, at 3.) [Doc. 21] Defendants contend that this alleged injury does not meet the injury in fact requirement for standing because Plaintiffs are not members of the Georgia General Assembly and, therefore, have no basis for objecting to how that body operates. Defendants also argue that Plaintiffs' assert a "nonexistent right to a 'particular kind of Government conduct' which the 'Government [allegedly] has violated by acting differently'" and argue that this does not satisfy the requirements of causation and redressability. (Defendants' Brief in Support of Motion to Dismiss, at 9 (quoting *Allen v. Wright*, 468 U.S. 737, 754 (1983)).) [Doc. 5]

In *Baker v. Carr*, 369 U.S. 186, 187-88 (1962), voters in Tennessee sought a declaration that the Tennessee scheme of legislative apportionment deprived them of equal protection by impairing the effectiveness of their votes compared with those of voters in other counties. The Supreme Court concluded that the plaintiffs had standing because they had an interest in maintaining the effectiveness of their votes. There are certain obvious differences between this case and *Baker v. Carr*. In *Baker v. Carr*, the plaintiffs argued that their votes were diluted by the method by which the state apportioned its legislature. Plaintiffs here do not challenge the method by which the Georgia General Assembly is apportioned as a whole. It is without dispute that the apportionment of the General Assembly as a whole satisfies the "one person, one vote" constitutional standard. Consequently, Plaintiffs are not arguing that the votes they cast for their particular state

representatives and senators have been diluted as compared to those votes that other voters elsewhere in the state cast for their elected legislators. Instead, Plaintiffs are arguing that it is their legislators whose votes are diluted in the General Assembly. Plaintiffs' alleged injury, therefore, is one step removed from the situation that existed in *Baker* and other similar cases where the Supreme Court held that the voters had standing to sue.

The questions then is whether this distinction between the seminal reapportionment cases and this case destroys Plaintiffs standing to bring the suit and requires that the suit instead be filed by the allegedly injured legislators, as Defendants assert. Specifically, the Court must consider whether Plaintiffs allegedly have suffered a "distinct and palpable" injury in fact themselves, and, if not, whether Plaintiffs can assert third-party standing for the alleged injury to their legislators. *See, e.g., Warth v. Seldin*, 422 U.S. 490, 501 (1975) ("Of course, Art. III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants."); *Harris v. Evans*, 20 F.3d 1118, 1121-24 (11th Cir. 1994) (discussing third-party standing requirements).

The Plaintiffs have not identified any specific legislation that they are interested in and that has been thwarted by the local delegation rules of the Georgia General Assembly. The Court will not speculate as to any possible distinct and palpable injury to Plaintiffs that may exist with respect to an unidentified legislative agenda. Nevertheless, with respect to the application of the rules of the House and Senate to the Fulton County local delegations, the Court concludes that Plaintiffs have alleged an injury in fact sufficient to confer standing in this case. As

stated above, Plaintiffs do not allege that the votes they cast at the ballot box have themselves been diluted. They have an equal say with all other voters in Georgia in the election of senators and representatives. Nevertheless, they contend, the effect of their votes has been diluted by their election of legislators whose votes in the General Assembly are not on equal footing with all other legislators with respect to local legislation affecting Fulton County. Dilution of Plaintiffs' representation would be more obvious if the House and Senate rules specifically provided that Plaintiffs' legislators are provided only one vote on each bill that comes to the floor while other legislators are entitled to two votes. Although the facts of the case are not as simple as this hypothetical, the effect is the same.

Plaintiffs' entitlement to full and equal representation without invidious discrimination is sufficient to confer standing in this case. This does not mean that Plaintiffs and all Georgia voters are entitled to legislators of equal political power. The Speaker of the House will always have more political power than a freshman representative. That is the nature of the institution. Full and equal representation simply means that Plaintiffs are entitled to claim legislators of equal voting power without invidious discrimination. Presuming for the purposes of this issue that they have been denied full and equal representation, Plaintiffs have alleged sufficient injury in fact with respect to the application of the rules of the House and Senate to the Fulton County local delegations.

This case appears to be one of first impression. Nevertheless, the Court's conclusion follows from relevant case law. In at least one case, the Supreme Court in similar circumstances did conclude that the standing requirement

was satisfied. In *Board of Estimate v. Morris*, 489 U.S. 688, 690-91 (1989), residents and voters of the New York City borough of Brooklyn sued the city's Board of Estimate on grounds that its composition was inconsistent with the Equal Protection Clause's "one person, one vote" requirement. The Board itself was a nonelective body composed of elective officials. The voters in *Board of Estimate* were not challenging the effectiveness of their votes for their city leaders. Their complaint was that each member of the Board of Estimate had one vote but represented constituencies of vastly disparate size. The Supreme Court allowed the voters to bring the case and ruled for them on the merits. In addition, the Court notes that the Fourth Circuit recently rendered judgment in a case somewhat similar to this one – at least for standing purposes – where South Carolina voters challenged as unconstitutional the role of that state's local legislative delegations. *Vander-Linden v. Hodges,* 193 F.3d 268, 270 (4th Cir. 1999). The standing of those voters to bring suit was not questioned in the Fourth Circuit's opinion.

In addition to alleging an injury in fact, Plaintiffs have sufficiently alleged that their injury is traceable to Defendants' actions and can be redressed by this Court. The cause of their injury is the rules that Defendants have promulgated to govern consideration of local legislation by the General Assembly. Furthermore, Plaintiffs' injury is redressable because it is possible for the Court to enjoin the present system and require the Georgia General Assembly to develop procedures that do not violate the Constitution. The Court need not develop its own alternative method for enacting local legislation in order to redress Plaintiffs' injury. As the Supreme Court stated in *Reynolds v. Sims*, 377 U.S. 533, 585 (1964),

> Remedial techniques in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions. It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action. . . .

Id. Courts in voting cases realize that they are somewhat ill-suited for what inherently is a political task. *See Upham v. Seamon*, 456 U.S. 37, 41-42 (1982) ("In fashioning a reapportionment plan or choosing among plans, a district court should not preempt the legislative task nor 'intrude upon state policy any more than necessary.'" (Citation omitted.)). Consequently, courts often have left the creation of constitutional alternatives to the offending state legislature, subject to judicial oversight. *See, e.g., Reynolds*, 377 U.S. at 586 (stating that "judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so"); *VanderLinden v. Hodges*, 193 F.3d 268, 281 (4th Cir. 1999) (remanding case to permit state legislature to correct constitutional defect, subject to approval of the district court); *Johnson v. Miller*, 922 F. Supp. 1556, 1569 (S.D. Ga. 1995) ("No plan of congressional redistricting created by court or legislature will achieve perfection. . . . We do no harm with this plan, which cures the unconstitutionality of the former and can serve in 'caretaker' status until the legislature convenes to change it."). Plaintiffs have alleged a "distinct and palpable" injury traceable to Defendants' conduct and capable of redress by this Court. Accordingly, Plaintiffs have satisfied the constitutional

requirements for standing with respect to the application of the rules of the House and Senate to the Fulton County local delegations.

The Court also concludes that Plaintiffs have satisfied the prudential requirements of standing with respect to application of the House and Senate rules to the Fulton County local delegations. First, Plaintiffs' Amended Complaint falls within the zone of interests protected by the constitutional provision at issue. For almost forty years, it has been understood that the Equal Protection Clause protects the right of suffrage from debasement and dilution. *See, e.g.*, *Reynolds*, 377 U.S. at 555 ("And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."). Second, Plaintiffs do not complain of general grievances more appropriately resolved by the legislative branch. The grievance of which they complain is a specific harm directed to them but not other Fulton County voters. It is not a generalized harm that all Georgia voters suffer. Third, Plaintiffs assert their own legal rights, not those of third parties. Plaintiffs allege that they themselves have been injured, not simply that their legislators have suffered injury. Consequently, prudential considerations support a finding that Plaintiffs possess standing to sue in this case.

Admittedly, a strong argument exists that the affected legislators also could bring suit, as Defendants contend. *Compare Powell v. McCormack*, 395 U.S. 486, 496 (1969) (granting standing to Congressman singled out for unfavorable treatment as opposed to other members), *and Coleman v. Miller*, 307 U.S. 433, 438, 446 (1939) (granting standing to Kansas state legislators, whose votes were

nullified, on grounds that they "have a plain, direct and adequate interest in maintaining the effectiveness of their votes"), *with Raines v. Byrd*, 521 U.S. 811, 829 (1997) ("In sum, appellees have alleged no injury to themselves as individuals (contra, *Powell*) the institutional injury they allege is wholly abstract and widely dispersed (contra, *Coleman*), and their attempt to litigate this dispute at this time and in this forum is contrary to historical experience."). The standing of legislators, however, does not automatically preclude standing to sue on the part of voters as well. "Once it is determined that a particular plaintiff is harmed by the defendant and that the harm will likely be redressed by a favorable decision, that plaintiff has standing – regardless of whether there are others who would also have standing to sue." *Clinton v. City of New York*, 524 U.S. 417, 434-436 (1998). For legislators, it is the relative impotence of their vote that has caused them injury; for Plaintiffs themselves, it is their right to full representation by their duly elected legislators that allegedly has been injured. In the "one person, one vote" context, the Supreme Court has "squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue." *Baker v. Carr*, 369 U.S. 186, 206 (1962). "No right is more precious in a free country than that of having a voice in the election of those who make laws under which, as good citizens, we must live." *Reynolds*, 377 U.S. at 560. That voice is muted if the representatives we elect cannot speak for us on an equal basis with their colleagues.

This analysis applies with respect to the application of the Rules of the House and the Senate to the Fulton County local delegations and to the passage of local

legislation affecting Fulton County. Whether Plaintiffs have standing with respect to the application of the House and Senate rules to other counties is more problematical. House Rule 11 and Senate Rule 187(u) do not provide an immutable scheme by which all county legislative delegations must handle their local legislation. The House and Senate rules instead are merely default rules that individual House delegations and individual Senate delegations may follow or not follow (by creating their own local delegation rules) even on the issue of voting requirements. It is the individual delegations themselves that determine the procedures that apply to their local legislation. Plaintiffs have not identified any injury that they have suffered due to the application of the House and Senate rules to other local delegations. Outside the Fulton County context, they assert only a generalized grievance about the operation of the General Assembly.

Furthermore, if, as Plaintiffs themselves contend, local laws are in essence passed by local delegations, the proof required in any suit necessarily will turn on the actions of individual legislative delegations, which act independently of all the other delegations. One local delegation's procedures and activities cannot harm voters outside of that local jurisdiction; the Georgia Constitution explicitly provides that no local law can be enacted that would repeal any portion of the general law of Georgia. Ga. Const., art. III, § 6, ¶ 4(a). Voters of other counties or municipalities may have grounds for challenging the rules of their own county legislative delegations on grounds not asserted by Plaintiffs in this action. Plaintiffs, however, do not have standing to assert potential grievances of voters in other counties. The injury in fact requirement and prudential considerations dictate that Plaintiffs have

standing to assert an equal protection challenge to the rules of the House and Senate only as applied to the Fulton County local delegations and local legislation affecting Fulton County.

3. POLITICAL QUESTION DOCTRINE

Next, Defendants contend that Plaintiffs' Amended Complaint raises only a nonjusticiable "political question." Prior to the Supreme Court's landmark decision in *Baker v. Carr*, issues regarding the relative strength of state voters were thought to be unreviewable as nonjusticiable "political questions." *Baker*, 369 U.S. at 208-09. Indeed, the Supreme Court itself previously had held that cases involving state legislative issues brought pursuant to Article IV's Guaranty Clause were nonjusticiable. *Luther v. Borden*, 48 U.S. (7 How.) 1, 11 (1849). In *Baker*, however, the Supreme Court ruled that the political question doctrine does not bar a federal court from deciding whether state electoral apportionment violates the Equal Protection Clause. *Baker*, 369 U.S. 208-37.

Nevertheless, Defendants contend that this case falls within the ambit of the political question doctrine because Plaintiffs have brought this suit "in contravention of the principles of federalism and comity." (Defendants' Motion to Dismiss, at 3.) [Doc. 5] The political question doctrine, however, is based on concepts that underlie the separation of powers among the three branches of the federal government rather than notions of federalism between the federal government and the states. The Supreme Court in *Baker* clearly stated that the political question doctrine does not shield state action in the area of legislative apportionment from federal judicial review. Justice Brennan delivering the

opinion of the Court wrote that "it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the 'political question.'" *Id.* at 210. This conclusion has been criticized by some commentators. *See, e.g.*, Robert F. Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies*, 30 Stan. L. Rev. 661, 664 (1978) (arguing that separation of powers principles apply to relations between the federal judiciary and state governments so that federal courts do not automatically possess full range of power to remedy specific constitutional violations committed by state government). The Supreme Court, however, has never retreated from its position. *See e.g., Elrod v. Burns*, 427 U.S. 347, 352 (1974) (Brennan, J, plurality opinion) ("The short answer to [the petitioner's] argument is that the separation-of-power principle, like the political question doctrine, has no applicability to the federal judiciary's relationship to the states."); *Powell v. McCormack*, 395 U.S. 486, 517-22 (1969) (reiterating that the political question doctrine arises from separation of powers concerns). Only where questions affecting states' interests have been confided to Congress or the federal Executive Branch can they be deemed nonjusticiable political questions. *See generally*, 13A Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 3534.1 (2d ed. 1984) ("If questions affecting states' interests are to be found political, it must have been because the underlying issues have been confided to Congress or the Executive, not because of concern for state rights as such.").

Defendants contend that this is a "political question" case because it implicates the Guaranty Clause. In Guaranty

Clause cases, however, as in all other cases, it is the relationship between the federal judiciary and the other federal branches, and not the federal judiciary's relationship to the states, that gives rise to a nonjusticiable political question. *Baker v. Carr*, 369 U.S. 186, 210 (1962); *cf. Davids v. Akers*, 549 F.2d 120, 126 (9th Cir. 1977) (failing to conclude that Guaranty Clause issue arose in suit challenging Arizona House of Representatives' committee appointment process). Because this case does not touch issues related to the separation of powers among the federal Executive, Legislative, and Judicial branches, the Court must conclude that this case does not implicate the political question doctrine. *Accord Gordon v. Texas*, 153 F.3d 190, 194 (5th Cir. 1998) ("[T]he potential for a clash between a federal court and other branches of the *federal* government is fundamental to the existence of a political question; a simple conflict between a federal court and state agencies does not implicate the doctrine." (emphasis in original.)); *Larsen v. Senate of Pennsylvania*, 152 F.3d 240, 245 (3d Cir. 1998) ("Thus, because the issues . . . call upon us to review the actions of a state legislature as opposed to the acts of one of the political branches of the federal government, the case does not present a typical 'political question' as that term has come to be defined."), *cert. denied*, *Larsen v. Afflerbach*, 525 U.S. 1145 (1999); *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir. 1992) (stating that the "political question doctrine arises primarily from concerns about the separation of powers within the federal government"); *see also VanderLinden v. Hodges*, 193 F.3d 268, 272 n.2 (4th Cir. 1999) ("The State's contention that the political question doctrine totally precludes judicial consideration of this case cannot prevail in the face of *Reynolds, Baker* [ ], and their progeny.").

4. PROPER PARTIES

Defendants contend that the Governor of Georgia, Roy E. Barnes, should be dismissed from this suit on grounds that he is not a proper party to this action. According to Defendants, Plaintiffs' lawsuit attacks only operations of the State of Georgia's legislative branch, over which the Governor possesses no formal control. Consequently, Defendants argue that there is no relief that can be granted against the Governor to redress Plaintiffs' grievance. Defendants contend that the Court should dismiss all claims against the Governor pursuant to Fed. R. Civ. P. 12(b)(6). The Court agrees.

Plaintiffs base suit against Governor Barnes entirely on his veto power over legislation. They argue that the Governor is a necessary and indispensable party to this suit because he signs local legislation. Consequently, full relief cannot be obtained without enjoining him from signing such legislation. If, however, this Court were to grant Plaintiffs' injunction, there would be no local legislation passed by the General Assembly under the current rules. Plaintiffs' suit against the Governor, therefore, can only be based on the office's mere possession of the veto power and not any specific exercise of it. The bare existence of Governor Barnes' constitutional right to veto legislation cannot alone entangle him with the legislative branch's legislative function so as to make him a party to this case. Indeed, the Governor's veto power is at the heart of the State of Georgia's system of checks and balances, so that authority cannot be construed as itself foiling the separation of powers between the Governor and the General Assembly. Because the Georgia Constitution provides that "[t]he legislative, executive, and judicial powers shall forever remain separate and distinct," Ga.

Const., art. I, § 2, ¶ 3, and Plaintiffs have provided no argument whatsoever that the Governor has unconstitutionally circumvented this requirement by attempting to control, direct, or participate in the General Assembly's method of enacting local legislation, the Defendants' Motion to Dismiss is granted as to Governor Barnes.

Defendants also contend that the Georgia House of Representatives, the Georgia State Senate, and both bodies' various local delegations are not proper parties because they have no legal identity under Georgia law. Defendants argue that the capacity to be sued is controlled by state law; and that none of these entities has such capacity. Accordingly, Defendants argue that the Georgia House and Senate and their various local delegations should be dismissed from this action. The Federal Rules of Civil Procedure provide that, except in cases of a partnership or other unincorporated association or the capacity of a receiver, the capacity to sue or be sued in cases dealing with entities other than individuals or corporations "shall be determined by the law of the state in which the district court is held." Fed. R. Civ. P. 17(b). In Georgia, lawsuits can proceed only where both the plaintiff and defendant are "legal entities." *Howard v. Brown*, 738 F. Supp. 508, 510 (S.D. Ga. 1988); *Cravey v. Southeastern Underwriters Ass'n*, 214 Ga. 450, 453 (1958). Georgia law recognizes three categories of legal entities: (1) natural persons, (2) corporations, and (3) "such quasi-artificial entities as the law recognizes as being capable to sue." *Georgia Insurer's Insolvency Pool v. Elbert County*, 258 Ga. 317, 318 (1988); *Cravey*, 214 Ga. at 453. The question is whether the Georgia House of Representatives, the Georgia State Senate, and their various local delegations fall within the third category.

After careful consideration, the Court concludes that the Georgia House of Representatives, the Georgia State Senate, and both bodies' various local delegations do not have capacity to sue and be sued. In the context of an unincorporated business association, the Georgia Supreme Court has held:

> An express statutory provision . . . is not indispensable to an association's capacity to sue and be sued in the association's name; such a suit may be maintained by virtue of a necessary implication arising from statutory provisions, as in cases where an unincorporated association is recognized as a legal entity by statutes which do not in terms authorize it to sue or be sued as such.

Cravey, 214 Ga. at 453. The Court believes that this reasoning also applies to other "quasi-artificial entities," since the language is quite open-ended and not explicitly limited to business entities. Additionally, other courts, including the Georgia Supreme Court, have applied similar language to government bodies in related contexts. *See Howard*, 738 F. Supp. at 510 (probate court); *Parker v. Board of Educ. of Sumter County*, 209 Ga. 5, 5-6 (1952) (county board of education).

Applying *Cravey*, the Court concludes that the Georgia House of Representatives, Georgia State Senate, and the various county House and Senate delegations cannot be sued. This Court has found no express or implied constitutional or statutory authority – and Plaintiffs have not apprised the Court of any – that could support a finding of capacity in this case. *See, e.g.*, Ga. Const., art. III, § 6, ¶ 2 (stating specific powers of General Assembly). *See contra Georgia Insurer's Insolvency Pool*, 258 Ga. at

318 (concluding that Elbert County is legal entity based on Georgia statute providing that "[e]very county is a body corporate with power to sue or be sued in any court").

This conclusion is consistent with both the Georgia Supreme Court's decision in *Parker v. Board of Education of Sumter County*, 209 Ga. 5, 5-6 (1952), where the court held that the Sumter County Board of Education could not be sued, and Judge Edenfield's conclusion in *Howard v. Brown*, 738 F. Supp. 508, 510 (S.D. Ga. 1988), that the Burke County Probate Court is not a legal entity subject to suit. *Id.*; *Parker*, 209 Ga. at 5-6; *cf. Bond v. Floyd*, 385 U.S. 116, 131 (1966) (deciding merits of suit, which was filed not against the Georgia House of Representatives but rather against the Speaker of the House, Speaker Pro-Tempore, several representative members, certain officers of the House, and the Secretary of State, where the House deprived member Julian Bond of constitutional rights). Accordingly, Plaintiffs' recourse is not against the Georgia House of Representatives, the Georgia State Senate, and the Fulton County House and Senate delegations, but rather against individual members of those bodies in their official capacities. Plaintiffs have sued Lieutenant Governor Mark F. Taylor, Speaker of the House Thomas B. Murphy, Fulton County House Delegation Chairperson James "Billy" McKinney, and Fulton County Senate Delegation Chairperson David Scott. Accordingly, although the Georgia House of Representatives, the Georgia State Senate, and the Fulton County House and Senate delegations are not proper parties and must be dismissed, the Court does not dismiss Plaintiffs' entire suit on this procedural basis because Plaintiffs also have sued proper individual representatives of the named bodies.

5. "ONE PERSON, ONE VOTE"

Defendants contend that a consideration of the merits reveals that the "one person, one vote" requirement does not apply to the Georgia General Assembly's local delegations or rules governing local legislation and, therefore, there is no equal protection violation. Plaintiffs conversely contend that the "one person, one vote" requirement does apply and Defendants are in violation of it. The Fourteenth Amendment's Equal Protection Clause "requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Certainly, the original meaning of "one person, one vote" has been satisfied by the equal apportionment of both houses of the General Assembly. The Supreme Court has gone further and held that the "one person, one vote" requirement applies "whenever a state or local government decides to select persons by popular election to perform governmental functions. . . . " *Hadley v. Junior College Dist.*, 397 U.S. 50, 56 (1979). Accordingly, for the Equal Protection Clause's "one person, one vote" requirement to apply to county House and Senate delegations, *Hadley* requires that Plaintiffs must show two things. First, Plaintiffs must show that the Fulton County House and Senate delegations are selected by "popular election." If they are, Plaintiffs must then show that these delegations perform "governmental functions." If the answers to both factors are in the affirmative, then the "one person, one vote" requirement applies to Fulton County House and Senate delegations.

Applying pertinent Supreme Court authority, it seems that the "popular election" prong of the *Hadley* test is

clearly met. It is undisputed that the members of the Fulton County House and Senate delegations are popularly elected. *See* Defendants' Reply to Plaintiffs' Response to Defendants' Motion to Dismiss, at 6 ("The question here is not whether the members of the Georgia General Assembly are elected by popular vote from districts that are proportionally sized. They are."). [Doc. 21]. When public officials become members of a governmental body simply by virtue of their popular election to the legislature, they are deemed popularly elected for the purposes of the "one person, one vote" requirement. *See Board of Estimate v. Morris*, 489 U.S. 688, 694 (1988) (stating that New York City Board of Estimate is deemed popularly elected even though city officials who comprise it actually are elected in other capacities and only "become members as a matter of law upon their various elections" to other offices); *VanderLinden v. Hodges*, 193 F.3d 268, 273-74 (4th Cir. 1999) ("Members of South Carolina's legislative delegations, like members of the Board of Estimate in *Morris*, are properly elected to other offices and, in the same way that the officials in *Morris* become board members, become delegation members as a matter of law 'upon their various elections.'"). In this case, members of the Georgia House of Representatives and Georgia State Senate become members of the county House and Senate delegations in which their districts are located merely by being elected to the House or Senate. The Rules of the Georgia House of Representatives specifically state:

> If a majority of the members of the House whose districts are wholly or partially located within a political subdivision shall file with the chairman of the Committee on State Planning and Community Affairs their own rules as to the number of representatives who must sign proposed legislation

> affecting that political subdivision before it will be favorably reported by the Committee on State Planning and Community Affairs, the committee shall observe such rules in considering such legislation. Otherwise, the committee shall not favorably report any legislation affecting a political subdivision unless all of the Representatives whose districts are wholly or partially located within the political subdivision shall sign such legislation.

Rules of the Georgia House of Representatives, Rule 11 (2000). The Rules of the Georgia State Senate similarly state that local legislation must be approved "by a majority of the Senators representing the political subdivision affected. . . . " *Rules of the Georgia State Senate*, Rule 187(u). It is clear that membership in the Georgia General Assembly's local delegations is determined by nothing more than (1) the election of a representative or senator and (2) the location of his or her district within a particular county or political subdivision. Because representatives and senators become delegation members not through appointment but simply by virtue of their popular election to the legislature, Georgia's local legislative delegations are deemed popularly elected. Accordingly, Plaintiffs have satisfied the first prong of the *Hadley* test.

Plaintiffs, however, cannot satisfy the second prong of the *Hadley* test: that the Georgia General Assembly's local delegations engage in "governmental functions." The Supreme Court in *Hadley* looked both at precedent from prior cases and the government activities at issue in that case and provided a non-exhaustive list of functions that it deems governmental in nature. These governmental functions include the ability to levy and collect taxes, issue bonds, hire and fire employees, make contracts, collect

fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, manage operations of educational institutions, establish and maintain jails, build roads and bridges, administer a county welfare system, perform duties in connection with elections, set a county's tax rate, and adopt a county budget. *Hadley v. Junior College Dist.*, 397 U.S. 50, 53-54 & n.6 (1970); *see also Avery v. Midland County,* 390 U.S. 474, 476-77 (1968) (listing governmental functions).

Applying the *Hadley* test, the Fourth Circuit in *VanderLinden v. Hodges,* 193 F.3d 268, 277-78 (1999), concluded that South Carolina's local legislative delegations did engage in governmental functions. The Fourth Circuit emphasized that "[l]egislative delegations have played a critical role in the governance of South Carolina counties for more than a century" and "the system of locally elected county government was rejected because it had resulted in the election of large numbers of African-American officials." *Id.* at 270. Indeed, numerous South Caroline [sic] statutes provided authority for local legislative delegations to exercise power over local governments and their operations to the extent that the local delegations acted practically as surrogates for county governments. *Id.* (noting that South Carolina legislative delegations historically had "controlled virtually every aspect of local government"). "[I]n addition to being state legislators, members of the Senate and House were effectively the county legislature and governing board." *Id.* at 271. Through the years, these legislative delegations retained significant local governmental functions, which the Fourth Circuit noted that the parties stipulated to include:

1. making and/or recommending appointments to boards and commissions;

2. approving and/or recommending the expenditure of money allocated by the South Carolina General Assembly for highways, parks, recreation, tourism, and other matters;

3. approving the budgets of local school districts;

4. initiating referenda regarding the budgetary powers and the election of governing bodies for a special purpose in public service districts;

5. approving the reimbursement of expenses for county planning commissioners;

6. approving county planning commission contracts with architects, engineers, and other consultants;

7. altering or dividing school districts of counties;

8. reducing existing special school levies in counties and school districts; and

9. submitting grant applications for planning, development, and renovating park and recreation facilities.

Id. It was these functions along with an additional "array of state statutes empowering the delegations to perform fiscal, regulatory, and appointive functions" that led the Fourth Circuit to conclude that the South Carolina legislature's local delegations performed governmental functions.[10] *Id.* at 277.

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[10] The additional unstipulated array of fiscal, regulatory, and appointive functions that the Fourth Circuit recognized were the power to direct the levy of taxes for the benefit of county hospitals; the power to approve the issuance of general obligation bonds by the governing authority of the regional airport districts; the power to waive penalties

(Continued on following page)

Plaintiffs contend that *VanderLinden* is authority that Georgia's local legislative delegations engage in governmental functions. Plaintiffs' argument, however, ignores important relevant distinctions between the role of South Carolina's local legislative delegations and the role of Georgia's local legislative delegations. Plaintiffs argue that the South Carolina statutes at issue in *VanderLinden* limit the powers of South Carolina's legislative delegations, while no such statutory limitations exist in Georgia. Accordingly, Plaintiffs argue that the case before the Court is an even stronger case for Plaintiffs than *VanderLinden* presented for the South Carolina plaintiffs. The facts, however, belie that conclusion. A reading of the statutes at issue in *VanderLinden* shows that South Carolina's local legislative delegations performed local governmental functions either in lieu of or in concert with local governments, depending on the situation. The statutes the Fourth Circuit cited in *VanderLinden* do not limit the role of South Carolina's local legislative delegations to consideration of local legislation. They instead broadly

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for a taxpayer's failure to make the required annual statement listing real and personal property; the power to approve the borrowing of funds by a regional higher education commission; the power to approve the acquisition of real property through the Heritage Trust Program; the power to create county and regional housing authorities; the power to permit abolition of special police districts; the power to approve the condition for public use of lakes and ponds; the power to approve the licensing of new hunting preserves; the power to regulate the use of certain animal traps; the power to direct a closed season on fish for 60 days; the power to approve certain new or amended fishing regulations; the power to authorize a county to abandon its free or rental textbook system; the power to approve the use of vote recorders; and the power to approve polling places for voting precincts. *VanderLinden*, 193 F.3d at 277 n.5.

define the role of South Carolina's local legislative delegations in overseeing and approving local governments' general activities. Indeed, most of these statutes explicitly provide that the local legislative delegation, not the entire General Assembly, is the final authority. For example, S.C. Code Ann. § 55-17-20 provides that

> [t]he governing authority of any regional airport district in this State [that meets certain criteria] may issue, without an election, general obligation bonds of the district in an amount as is within the constitutional debt limit applicable to the district for the purpose of paying the cost of maintenance, construction, renovation, extension, enlargement, improvement and acquisition of airports and suitable air navigation facilities; *provided, however, that as a condition precedent to the issuance of bonds a majority of the members of each delegation, including members of the House of Representatives and the Senate whose districts are located either wholly or partially within an airport district, must give their prior written approval.*

Id. (1999) (emphasis added). Similarly, another South Carolina statute provides that a county can spend state revenues obtained from forest lands only "upon the approval of a majority of the county legislative delegation, including the Senator." S.C. Code Ann. § 48-23-260 (1999). Yet another statute provides that a county's school districts can be altered either by the entire General Assembly *or* by the county board of education "[w]ith written approval of the Senator and the entire house legislative delegation from the county involved." S.C. Code. Ann. § 59-17-20 (1999). County legislative delegations even have been granted control over the use of public lakes and

ponds in their county. S.C. Code Ann. § 50-13-2020 (1999). The list goes on. *See, e.g.,* S.C. Code Ann. §§ 12-27-390, 12-28-2730 (1999) (requiring gasoline tax revenues distributed to counties for water recreational resources to be approved "by a majority of the county legislative delegation, including a majority of the resident senators, if any"); S.C. Code Ann. § 44-93-170 (1999) (requiring "written request of a majority of the legislative delegation of the recipient county" for State Treasurer to release proceeds of Infectious Waste Contingency Fund); S.C. Code Ann. § 4-11-265 (1999) (stating that referendum in a county can be initiated by a majority of "[t]he legislative delegation of any county, including the Senator"); S.C. Code Ann. § 59-73-110 (1999) ("All existing special tax levies in all counties and school districts may be reduced as deemed advisable by the local boards of trustees and the county boards of education, with the approval of the Senator and at least one half of the members of the House of Representatives of a county in which such reduction is made.").

In contrast, no final governmental authority is granted to the Georgia General Assembly's local delegations. The Georgia Constitution explicitly provides that the General Assembly *as a whole,* not specific local delegations, is the legislative authority for Georgia's counties and municipalities. *See* Ga. Const., art. 3, § 5, ¶ 8 (providing that local legislation shall be read at least once before being voted on by the full General Assembly); Ga. Const., art. IX, § 2, ¶ 1 ("Any such local law shall remain in force and effect until amended or repealed as provided in subparagraph (b). This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any

local law to repeal, modify, or supersede any action taken by a county governing authority under this section except as authorized under subparagraph (c) hereof."); Ga. Const., art. 9, § 2, ¶ 2 ("The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly."). The situation that existed in South Carolina before the *VanderLinden* decision is readily distinguishable from the situation that exists in Georgia today.

Plaintiffs nevertheless contend that the second prong of the *Hadley* test is satisfied because Georgia local legislative delegations engage in the governmental function of "lawmaking." According to Plaintiffs, the governmental function of lawmaking with regards to local legislation rests with local delegations rather than (or at least in addition to) the General Assembly as a whole. They argue that the "one person, one vote" requirement, therefore, must apply. First, the Court cannot agree that the existence of any role whatsoever in lawmaking raises a "one person, one vote" issue. If that is the principle that triggers the "one person, one vote" requirement, then all committees and subcommittees of the Georgia General Assembly, every other state's legislature, and the United States Congress would be subject to this requirement. The only legislative committee that could ever meet the "one person, one vote" requirement would be a "committee of the whole." Regardless of whether the result would be gridlock or seriatim enactment of much poorly vetted legislation, our republican form of government assuredly would suffer. Without the work of its committees, the Georgia General Assembly could not conduct its business

in forty days. Clearly then, a mere advisory role in law-making as typically exists with legislative committees, subcommittees, and local legislative delegations cannot trigger the "one person, one vote" requirement. *See Education/Instruccion, Inc. v. Moore,* 503 F.2d 1187, 1189 (2d Cir. 1974) (finding that "one person, one vote" requirement did not apply to councils whose roles essentially were "to acquire information, to advise, to comment and to propose"). The Fourth Circuit in *VanderLinden* did not reach a different conclusion. *See VanderLinden v. Hodges,* 193 F.3d 268, 281 (4th Cir. 199 [sic]) ("The delegations continue to exist and can lawfully exercise two-thirds of the powers that the dissent acknowledges to be theirs: the power to receive information and the power to make non-binding recommendations."). The Equal Protection Clause of the Fourteenth Amendment and the 'one person one vote" principle does not limit a legislative body to functioning as a committee of the whole. It does not require a properly apportioned legislative body to distribute power and influence so that every legislator is as powerful and influential as every other member of the body.

Plaintiffs also contend that their vote is diluted because their representatives and senators do not get a vote on City of Atlanta local legislation. Citizens of Atlanta are also citizens of Fulton County, and there is good reason for thinking that their legislators should vote on local legislation affecting both jurisdictions. Citizens of unincorporated Fulton County are not citizens of the City of Atlanta. Plaintiffs are not deprived of any fundamental right or the subject of invidious discrimination by the fact that their legislators do not vote on local legislation affecting a political subdivision they do not represent.

The only remaining question then is whether passage of most local legislation in Georgia by a local consent calendar somehow distinguishes the facts here from the typical legislative committee system. In short, is full passage of local legislation in the House and Senate so ministerial as to render it nothing more than a sham formality? The Court concludes that it is not. Local legislation is not officially enacted by the General Assembly until it is voted for by a majority of the full House and Senate, whose members are from equally apportioned districts and who cast a single, equal vote on each item of legislation. Final floor passage is not rendered merely ministerial by members' deference to colleagues on items of greater importance to those colleagues. Such deference is a form of political compromise that underlies the very existence of our republican form of government – and even underlay its creation. *See The Federalist* No. 37 (James Madison) ("To the difficulties already mentioned may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise.").

Furthermore, nothing except discretionary deference to "local courtesy" prevents members of the General Assembly from contesting any local legislation of which they disapprove. Any member in either body can object on the floor to passage of the local consent calendar any morning that he or she wishes. Also, nothing in the House

or Senate rules prevents a member from arguing to the House State Planning and Community Affairs Committee and the Senate State and Local Government Operations Committee that they should not report a bill to the full House or Senate, even if the requisite majority of the local delegation supports it. The House and Senate Rules state that a bill must have support of the requisite majority of the local delegation for the committee to send it to the floor with a "do pass" recommendation. The reverse, however, is not true. Nothing in the rules requires that the House and Senate committees must send a local bill to the floor once the requisite majority of the local delegation supports it. Additionally, in the Senate, Rule 113(e) specifically provides that three senators, only one of whose district must lie within the political subdivision directly affected, may have a local bill removed from the local consent calendar by objecting to it in writing. Accordingly, regardless of whether any objection typically is pursued or not, this Court cannot conclude that final passage of local legislation by the full House and Senate is merely ministerial. Passage of legislation is the principal governmental function of the legislative branch. Because full passage of local legislation – like all other legislation – by the full General Assembly is required and meaningful debate on the House floor is allowed, even if seldom exercised,[11] the

[11] Plaintiffs contend that *VanderLinden* requires the Court to analyze not the technical authority that the local delegations do or do not enjoy, "but rather what they actually do." (Plaintiffs' Reply to Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment, at 10-11.) [Doc. 29] Accordingly, Plaintiffs contend that it is the General Assembly's typical "mechanical" passage of local legislation that matters and a finding "that the local legislation delegations in Georgia do not have statutory authority to technically enact legislation

(Continued on following page)

Court cannot conclude that the governmental function of the General Assembly has been subverted in regards to local legislation and placed solely in the hands of the local delegations.

In short, the Georgia General Assembly's local delegations do not hold any separate governmental office or power related to the political subdivisions of the State of Georgia. Instead, they operate solely within the procedural and political confines of the General Assembly, a body that undisputedly has been constitutionally apportioned in accordance with the "one person, one vote" requirement. Local delegations and the rules that apply to local legislation are simply internal management tools that assist the General Assembly in handling vast quantities of legislation. As a practical matter, the voter dilution of which Plaintiffs complain is necessitated by apportionment of the

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does not render *VanderLinden* inapplicable." *Id.* at 10. The Court, however, cannot agree with Plaintiffs' characterization of *VanderLinden* on this point. The fourth Circuit in *VanderLinden* simply prevented the state from hiding behind prior legal decisions, which held that some powers of the local delegations were unconstitutional, since the local delegations still exercised those powers in contravention of the law. *See VanderLinden,* 193 F.3d at 277 ("Moreover, the [district] court did not find that the legislative delegations have in practice observed the limits set by the state supreme court. And indeed, nothing in the record suggests that the delegations have limited their activities in this manner. . . . For example, the delegations regularly approve particular local agency budgets pursuant to statute, despite South Carolina Supreme Court rulings striking down two statutes that gave similar budget-approval powers to certain delegations. Thus for purposes of equal protection review, we must regard the undisputed record evidence (including most notably the parties' stipulations) and the state statutes currently on the books, rather than court rulings invalidating a handful of other statutes, to be determinative of the powers exercised by local delegations.").

General Assembly according to population. Allowing legislators in split districts to vote on local legislation affecting some of their constituents is not the sort of invidious discrimination condemned by the reapportionment cases. A legislative rule or practice that requires or encourages consensus on the part of representatives and senators of those citizens most affected by a local bill before the full legislature votes on the bill is not unconstitutional. As a matter of fact, we as citizens probably should fear the consequences that might result if legislators from localities not affected by a particular local bill refused to consider the views of those legislators whose constituents are affected. Accordingly, the remaining Defendants are entitled to judgment as a matter of law on the Plaintiffs' equal protection claims.

D. VOTING RIGHTS ACT

Changes in the Rules of the General Assembly have not been submitted to the Justice Department for preclearance. Consequently, Plaintiffs claim that the Rules are invalid pursuant to the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.*, as amended. They do not identify any specific rule changes. Defendants respond that the Act does not apply to internal rules of the legislature. Plaintiffs contend that their Voting Rights Act claims should not be dismissed and that a three-judge district court should be empaneled to hear this action. In general, a three-judge panel must be convened to hear a suit brought pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c. A three-judge district court, however, is not required if the Court concludes that the

plaintiff's Section 5 claims are insubstantial, frivolous, or clearly without merit. *United States v. Saint Landry Sch. Bd.*, 601 F.2d 859, 865 (5th Cir. 1979);[12] *Broussard v. Perez*, 572 F.2d 1113, 1118 (5th Cir. 1978); *Moore v. Caledonia Natural Gas Dist.*, 890 F. Supp. 547, 549 (N.D. Miss. 1995); *Montgomery v. Leflore County Republican Exec. Comm.*, 776 F. Supp. 1142, 1144-45 (N.D. Miss. 1991); *Miller v. Daniels*, 509 F. Supp. 400, 405 (S.D.N.Y. 1981); *Webber v. White*, 422 F. Supp. 416, 423-25 (N.D. Tex. 1976). "Individuals must not be allowed to obtain a three-judge court, with its concomitant burdens, simply by intoning the catchwords of § 5. This court has an obligation to examine the complaint to determine whether it states a substantial claim." *Miller*, 509 F. Supp. at 405. A Section 5 claim is clearly without merit if Supreme Court precedent provides that preclearance requirements do not apply to the situation before the court. *LULAC v. Texas*, 113 F.3d 53, 55 (5th Cir. 1997); *Broussard v. Perez*, 572 F.2d 1113, 1119 (5th Cir. 1978). After careful and thorough review, the Court concludes that a three-judge panel should not be convened in this case since Plaintiffs' Voting Rights Act claims are clearly without merit based on prior Supreme Court precedent and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). To conclude otherwise and convene a three-judge court in this case would result in the unnecessary waste of judicial resources. *See, e.g., Allen v. Board of Elections*, 393 U.S. 544, 561 (1969) ("We have long held that congressional enactments providing for the convening of three-judge courts must be strictly

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[12] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions the former Fifth Circuit rendered prior to the close of business on September 30, 1981.

construed. Convening a three-judge court places a burden on our federal court system, and may often result in delay in a manner needing swift initial adjudication." (Citations omitted.)).

Section 5 limits the ability of certain states and political subdivisions to change their voting laws, regulations, or procedures from those that existed on or before November 1, 1964. 42 U.S.C. § 1973c. The State of Georgia and its political subdivisions are among those subject to the requirements of Section 5. *See* 28 C.F.R. Part 1 & § 51.6 (providing that Georgia is a "covered jurisdiction," as are its "political subunits"). Before enacting any voting law changes, the covered state or political subdivision must first obtain from the Attorney General of the United States or the United States District Court for the District of Columbia a finding that the modification "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. This process commonly is referred to as "preclearance." The Supreme Court has interpreted the preclearance requirement broadly, so that it "reach[es] any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Bd. of Elections*, 393 U.S. 544, 566 (1969).

The preclearance requirements, however, apply to legislative internal rule changes in only the most limited of circumstances. In *Presley v. Etowah County Commission*, 502 U.S. 491, 503 (1992), the Supreme Court explained that it has required preclearance in four situations: (1) changes to the manner of voting; (2) changes to candidacy requirements and qualifications; (3) changes to the composition of the electorate; and (4) changes that affect the creation or abolition of an elective office. *Id.* at 502-03. "[E]ach has a direct relation to voting and the election process." *Id.* at 503. The plaintiffs in

Presley challenged alterations to an Alabama county's practice that had allowed each commissioner full authority to determine how to spend funds in his own road district. The plaintiffs and the United States, as amicus curiae, argued for a position that the Supreme Court stated would mean that Section 5 embraces the routine actions of state and local governments at all levels. *Id.* at 494. The Court admitted that "in a real sense every decision taken by government implicates voting. That is but the felicitous consequence of democracy, in which power derives from the people." *Id.* at 504. Despite the fact that every government decision in some way affects voting, the Supreme Court concluded that the Voting Rights Act's preclearance requirements did not apply in *Presley*, where Plaintiffs challenged only internal governance procedures. It was irrelevant that some commissioners possessed less political power after the change:

> Appellants argue that the Common Fund Resolution is a covered change because after its enactment each commissioner has less individual power than before the resolution. A citizen casting a ballot for a commissioner today votes for an individual with less authority than before the resolution, and so, it is said, the value of the vote has been diminished. Were we to accept appellants' proffered reading of § 5, we would work an unconstrained expansion of its coverage.

Id. The Court concluded by holding that "[c]hanges which affect only the distribution of power among officials are not subject to § 5 because such changes have no direct relation to, or impact on, voting." *Id.* at 506.

Based on the precedent of *Presley*, this Court must conclude that preclearance as not required in this case. It

is true that changes in the various legislative delegations' rules might affect the distribution of power among officials and certain officials may have more or less authority after the changes. It is also true that the value of a citizen's vote may be diminished when his elected representative has less authority. Nevertheless, the Supreme Court has clearly, unmistakably, and explicitly held that such changes in internal rules and procedures do not raise a Voting Rights Act preclearance issue. *Id.* There is no claim in this action that the Rules of the General Assembly are being used to abridge the right to vote on account of race or color. Furthermore, the Voting Rights Act has never been interpreted as giving the Department of Justice broad supervisory authority over the internal operation of state legislatures. "If federalism is to operate as a practical system of governance and not a mere poetic ideal, the States must be allowed both predictability and efficiency in structuring their governments." *Id.* at 510. Accordingly, the Defendants are entitled to judgment as a matter of law with regard to Plaintiffs' Voting Rights Act claims.

Plaintiffs are apparently disappointed in the result of the legislative process in the General Assembly. If they are entitled to a remedy, it cannot come from this Court. It can come from the political process. To redress their grievance, Plaintiffs can lobby members of the General Assembly to change the procedural rules governing local legislation. Plaintiffs can run for the legislature themselves and, if elected, stymie the legislative process by objecting to the local consent calendar every morning until other legislators address their concerns. Plaintiffs can support candidates running in other districts in Fulton County who agree with their legislative agenda. Plaintiffs can support an amendment that broadens the home rule provisions of

the Georgia Constitution. Plaintiffs can campaign for a Lieutenant Governor and Speaker of the House who could use the carrot of committee appointments and their other persuasive powers to reform the House and Senate rules. Plaintiffs can even offer a candidate for Governor who will use his or her bully pulpit and full arsenal of executive powers to encourage the change that Plaintiffs desire. Although it is true that some of these possibilities may be politically less realistic than others, the possibilities for redress through the political process are manifold.

E. CLASS CERTIFICATION

Plaintiffs have filed a Motion for Certification of Class Action [Doc. 17]. In light of the Court's grant of Defendants' Motion to Dismiss the Amended Complaint, the Court need not address Plaintiffs' class certification motion. Accordingly, the Court denies as moot Plaintiffs' Motion for Certification of Class Action.

IV. CONCLUSION

This case presents a justiciable controversy. On the merits, there is no violation of our federal Constitution. "It is emphatically the province and duty of the judicial department to say what the law it." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). It, however, is not the province of the federal judiciary in the name of the equal protection of the laws to interfere in such internal political matters as how a state legislature seeks to reach consensus on local legislation. The Georgia General Assembly possesses inherent authority to manage its own internal affairs, especially with regards to hammering out political compromise. As long [sic] the House and Senate do not

entirely abdicate their lawmaking responsibility to local legislative delegations, the "one person, one vote" requirement does not apply to those delegations. Furthermore, procedural changes to the delegations' internal rules need not be precleared by the Attorney General of the United States or the United States District Court for the District of Columbia. Accordingly, Defendants' Motion to Dismiss the Amended Complaint [Doc. 20] treated as a Motion for Summary Judgment with respect to the equal protection claim is GRANTED. The Plaintiffs' Motion for Partial Summary Judgment [Doc. 13] is DENIED. Additionally, Defendants' initial Motion to Dismiss [Doc. 5] is DENIED AS MOOT. Plaintiffs' Motion for Certification of Class Action [Doc. 17] is DENIED AS MOOT.

SO ORDERED, this 26 day of January, 2001.

/s/ Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

1999-2000 RULES OF THE ATLANTA/ FULTON SENATE DELEGATION

DELEGATION ORGANIZATION

1. ***MEMBERSHIP***

Membership in the Atlanta/Fulton Senate Delegation shall consist of duly elected Senators who represent any portion of Fulton County and those Senators who represent portions of the City of Atlanta in Dekalb County.

2. ***ORGANIZATIONAL MEETING***

During the first week of a new term of the General Assembly and after election of members in a general election, an organizational meeting shall be called by the then existing Chairman for the purpose of electing officers and adopting rules for the next legislative session.

3. ***OFFICERS***

The officers of the Delegation shall be Chairman, Vice-Chairman, and Secretary elected by a majority vote at the Organizational Meeting.

4. ***DUTIES OF OFFICERS***

The Chairman shall preside at all meetings and public hearings of the Delegation and perform and exercise the duties and powers of the Chairman.

The Vice-Chairman shall act in the absence of the Chairman.

The Secretary shall keep the minutes of the meetings of the Delegation and shall be responsible for serving all appropriate notices to the members of the Delegation.

RULES OF CONDUCT

1. *Quorum of the Delegation shall be five (5) members. Official actions of the Delegation shall require a majority vote of those members present and voting, as long as a quorum is constituted.*

2. *The Delegation shall convene each Friday while the Senate is in session; immediately upon the adjournment of the Senate Rules Committee. Meetings may be called by the Chairman or by any five (5) members of the Delegation at any time. Each Delegation meeting shall last until adjournment by majority vote of those who are present.*

3. *The Rules of the Senate shall prevail in all matters not covered by Delegation Rules.*

4. *These rules may be amended upon a motion duly made and subsequently approved by a two third (2/3) vote of the members of the Delegation. For the consideration of changes in the Rules of the Delegation, members shall be notified of such change(s) in writing, at least five (5) days prior to action on the proposed changes by the Delegation.*

5. *The Secretary of the Delegation shall cause a copy of these Rules to be distributed to all members of the House and Senate.*

6. *Smoking during Delegation meetings is prohibited.*

RULES RELATING TO BILLS AND RESOLUTIONS

1. *All bills and resolutions shall be taken up and considered by the Delegation in the order in which they were introduced in the Senate.*

2. *A bill or resolution shall be considered only after presentation by its principle author or another designated*

legislator or aide. The principle author shall be the legislator whose name appears first on the list of authors.

3. *All bills and resolutions of local application shall come before the Delegation for consideration. After hearing, a motion shall be made and passed authorizing "Approval for Signatures", before returning said Bill or Resolution to the Senate State and Local Governmental Operations Committee.*

4. *An "Approval for Signatures" recommendation shall require a majority vote of those members present and voting, as long as a quorum is constituted.*

5. *Any bills or resolutions pertaining to the* ***City of Atlanta*** *must receive a majority vote of the members present, who represent any portion of the City of Atlanta. City of Atlanta legislation must have four (4) signatures of the seven (7) Senators representing any portion of the city of Atlanta. The following Senators have the right to vote on City of Atlanta legislation.*

   Senators from the 10th, 35th, 36th, 38th, 39th, 40th, and 42nd.

6. *Any bills or resolutions pertaining to* ***Fulton County*** *must receive a majority vote of those members present, who represent any or all portions of Fulton County. Fulton County Legislation must have five (5) signatures of the eight (8) Senators representing any portion of Fulton County. The following Senators have the right to vote on Fulton County legislation.*

   Senators from the 34th, 35th, 36th, 38th, 39th, 40th, 48th and 56th.

7. *Any legislation pertaining to* ***Annexation, Taxation, Consolidation or Merger of the City of Atlanta or Fulton County*** *shall require a two-thirds (2/3) vote of those members, who represent any portion of the*

City of Atlanta, Fulton County or any other municipality within the boundaries of Fulton County. The following Senators have the right to vote on such legislation.

For the City of Atlanta, Senators from the 10th, 35th, 36th, 38th, 39th, 40th, and 42nd, may vote.

For Fulton County and other municipalities therein, Senators from the 34th, 35th, 36th, 38th, 39th, 40th, 48th and 56th, may vote.

8. *Any legislation which pertains to* ***any municipality in Fulton County that is represented in its entirety by a single member or by no more than two members*** *of the Delegation and which legislation applies in every respect tot he jurisdiction only, requires only the signature(s) of the Senator(s) who represents that municipality.*

For the City of Alpharetta, the Senators from the 48th and 56th.

For the City of Mountain Park, the Senator from the 56th.

For the City of Roswell, the Senators from the 40th and 56th.

For the City of Fairburn, the Senator from the 35th.

For the City of Palmetto, the Senator from the 34th.

For the cities of Union City and Hapeville, the Senator from the 35th.

For the City of East Point, the Senators from the 35th and 39th.

For the City of College Park, the Senators from the 35th.

9. *Any bill or resolution pertaining to the* ***City of Atlanta, Board of Education*** *shall require a majority vote of the Senators, who represent any portion of the city of Atlanta. Atlanta Board of Education legislation must have four (4) signatures of the seven (7) Senators representing the City of Atlanta. The following Senators may vote on City of Atlanta – Board of Education matters.*

Senators from the 10th, 35th, 36th, 38th, 39th, 40th, and 42nd.

10. *Any bill or resolution pertaining to the* ***Fulton County Board of Education*** *shall require a majority vote of the members representing any or all parts of Fulton County outside the city of Atlanta. Fulton County Board of Education legislation must have four (4) of the seven (7) Senators representing Fulton County, outside the city of Atlanta. The following Senators may vote on Fulton County Board of Education matters.*

Senators from the 34th, 35th, 38th, 39th, 40th, 48th and 56th.

11. *The Chairman shall have the right to refer bills or resolutions to subcommittees for study, when needed.*

12. *The Delegation shall not consider for the first time, any measure originating in the Senate in the final five (5) days of the session, except upon written petition signed by no less than five (5) members of the Delegation for bills relating to Fulton County and four (4) members for bills relating to the City of Atlanta.*

Rules Adopted January 15, 1999 /s/ Vincent D. Fort
Senator Vincent Fort, Secretary

SIGNATURE REQUIREMENTS FOR LOCAL LEGISLATION

FOR FULTON COUNTY

HECHT OF THE 34th
SCOTT OF THE 36TH
FORT OF THE 39TH
RAY OF THE 48th
JAMES OF THE 35TH
TATE OF THE 38TH
EGAN OF THE 40TH
PRICE OF THE 56TH

FOR FULTON COUNTY BOARD OF EDUCATION

HECHT OF THE 34TH
TATE OF THE 38TH
EGAN OF THE 40TH
PRICE OF THE 56TH
JAMES OF THE 35TH
FORT OF THE 39TH
RAY OF THE 48TH

FOR THE CITY OF ALPHARETTA

RAY OF THE 48TH
PRICE OF THE 56TH

FOR THE CITY OF ATLANTA & THE ATLANTA BOARD OF EDUCATION

THOMAS OF THE 10TH
SCOTT OF THE 36TH
FORT OF THE 39TH
POLAK OF THE 42ND
JAMES OF THE 35TH
TATE OF THE 38TH
EGAN OF THE 40TH

FOR THE CITY OF COLLEGE PARK

JAMES OF THE 35TH

FOR THE CITY OF EAST POINT

JAMES OF THE 35TH
FORT OF THE 39TH

FOR THE CITY OF FAIRBURN

JAMES OF THE 35TH

FOR THE CITY OF HAPEVILLE

JAMES OF THE 35TH

FOR THE CITY OF MOUNTAIN PARK

PRICE OF THE 56TH

FOR THE CITY OF PALMETTO

HECHT OF THE 34TH

FOR THE CITY OF ROSWELL

EGAN OF THE 40TH
PRICE OF THE 56TH

FOR THE CITY OF UNION CITY

JAMES OF THE 35TH

RULES OF THE FULTON COUNTY HOUSE DELEGATION

1999-2000

ARTICLE I

Organization

Section 1. ***Membership***. The membership of the Fulton County House Delegation in the House of Representatives shall consist of the eighteen (18) duly elected Representatives of Fulton County, Georgia.

Section 2. ***Officers***. There shall be three officers of the Delegation: a Chair, a Vice Chair and a Secretary, who shall be elected by secret ballot by a majority vote of the membership.

Section 3. ***Election of Officers***. The officers of the Delegation shall be elected prior to the beginning of the regular session of the General Assembly following each November general election and after the election results have been certified. The meeting for the election shall be called by the Chair elected at the previous delegation election.

Only those members of the General Assembly who have been certified by the Secretary of State as having been elected at the November general election to the House of Representatives from Fulton County shall be eligible to vote.

The vote shall be by secret ballot following the nomination of candidates. Balloting for each office shall continue until one candidate for the office has received majority of votes.

Section 4. ***Succession***. If the Chair dies, resigns, or becomes unable to perform the Chair's duties, then there shall be an election of the sworn members of the Delegation to fill the vacancy for the remaining portion of the term. The election shall be conducted in accordance with the provisions of Section 3, Article 1 herein.

Section 5. ***Duties of the Chair***. The Chair shall preside at all meetings of the Delegation unless unable to in which case the Vice-chair shall serve as chair as set forth in section 6 of this article. The Chair shall cause to be called regular and special meetings of the Delegation in accordance with these rules. The Chair shall appoint all committees which shall be established by the Delegation. The Chair shall sign the certification that legislation has been considered in conformity with the rules of the Fulton County House Delegation.

Section 6. ***Duties of the Vice Chair***. During the absence or inability of the Chair to render and perform his or her duties or exercise his or her powers, the same shall be performed and exercised by the Vice Chair, and when so acting shall have all the powers and be subject to all the responsibility hereby given to such Chair. The Chair may delegate to the Vice Chair any powers or duties of the Chair.

Section 7. ***Duties of the Secretary***. The Secretary shall sign the minutes after they have been approved at the next meeting of the delegation. Except for called meetings, minutes of all meetings shall be distributed to members of the Delegation at least 24 hours proceeding the next regular meeting. The minutes shall be filed in an appropriate book after they are approved.

Section 8. ***Rules of Order***. The conduct of business of the Delegation shall be governed by these rules. In the absence of specific rules, the rules of the House shall apply and in the absence of specific rules in both the Delegation and in the House, ***Robert's Rules of Order, Revised*** will be followed.

Section 9. ***Voting***.

a) Voting on matters other than elections shall be by voice vote or show of hands unless the Chair is in doubt as to its outcome or unless a roll call vote is requested by a member of the Delegation. Upon request of any member, the roll shall be called and the vote recorded.

b) Only those Representatives shall vote in Delegation meetings as provided in Article IV, Section 6 herein.

c) No voting in Delegation or Committee meetings shall occur unless a quorum is present. A quorum shall consist of the lowest whole number greater than one half (½) of the number of members.

Section 10. ***Committees***. The Chair shall appoint committees of the Delegation for the consideration of specific areas of legislation or public interest or specific legislative proposals. Committees shall function in close cooperation with committees of the Senate Delegation wherever possible and may function as joint Committees of both Delegations upon mutual agreement between the two (2) Delegations.

The Chair and Vice Chair of the Delegation shall serve in an Ex Officio capacity without a vote, except the Vice Chair shall be able to vote as a member of any committee to which the Vice Chair is appointed.

Committees of the Delegation shall have two (2) officers, a Chair and Vice Chair, both appointed by the chair of the Delegation. A majority vote of a quorum of the members of each committee is required to pass legislation. No action shall be taken without a quorum.

Delegation standing committees are as follows: Courts; Education; Fulton County; Health and Welfare; Local Municipalities; and Tax, Salary and Pensions.

Where applicable the rules of the Fulton House Delegation shall apply to the committees of the Delegation.

Section 11. ***Special Committees***. The Chair may appoint Special Study Committees for the investigation of a particular area with the authority to recommend legislation to the delegation. Any recommendation shall be in writing and shall contain a statement of the facts on which the recommendation is based.

Section 12. ***Rules***.

a) The Delegation shall adopt rules governing the conduct of its business at the first meeting following the election of officers at the beginning of each two (2) year term of the General Assembly. The rules shall be adopted by vote of a majority of the Delegation. Each member shall be provided a copy of the proposed rules at least forty-eight (48) hours prior to said meeting.

b) Only sworn members of the Georgia General Assembly can vote to approve the Rules of the Fulton House Delegation.

c) The Delegation Rules shall remain in effect until amended or the adoption of new rules at the beginning of each two (2) year term of the Georgia Assembly.

d) Upon adoption, the Delegation Rules shall be sent to the House Committee on State Planning and Community Affairs with certification by the Delegation Chair that said rules have been adopted in conformity with the rules of the House and the Fulton House Delegation.

Section 13. ***Amendment of Rules***. The foregoing rules may be amended by vote of two-thirds (⅔) of the Delegation. No amendment shall be acted upon until each member of the Delegation has been presented a copy of the proposed amendment in writing, at least forty-eight (48) hours within the time he or she is called upon to vote on same.

Article II

Meetings

Section 1. ***Notice***. Meetings of the Delegation shall be upon call of the Chair as deemed necessary or upon the request of any seven (7) members of the Delegation. When the General Assembly of Georgia is not in session, notice of meetings in writing shall be issued to each member and to the press by the Administrative Assistant no less than two (2) days prior to the date of the meeting. When the General Assembly is in session, notice of meetings shall be issued to each member and to the news media by the Administrative Assistant, and whenever possible, shall be issued no less than two (2) hours prior to the time of the meeting.

Section 2. ***Agenda***. The Chair shall prepare and furnish to each member an agenda of business to come before each meeting at least twenty-four (24) hours prior to meetings when the General Assembly is not in session and at least two (2) hours prior to the meeting when the General Assembly is in session.

The first section of the agenda is reserved for the discussion of "house keeping" bills whose agenda is set by the Chair, with the remaining section being used to discuss more substantive matters.

At the beginning of each meeting the agenda can be amended by two-thirds (2/3) vote of the quorum.

A "Committee of the Whole" will be called to hear and act on recommendations of the committees.

Time restrictions on debates are to be set by the Chair or on request of the majority of the quorum.

New Business or Other Business to be discussed will follow.

Section 3. ***Quorum***. At any meeting the presence of ten (10) members of the Delegation in person shall be required to constitute a quorum.

Section 4. ***Decorum***. The Delegation shall have a "NO SMOKING" policy.

Section 5. ***Open Meetings***. All meetings of the Delegation or any Committee thereof, except when matters of dealing with personnel are involved, shall be open to the public.

Section 6. ***Minutes***. The Administrative Assistant shall keep full and complete minutes of each meeting and

shall make available a copy of the minutes of each meeting to any member of the Delegation who shall request the same.

Section 7. ***Public Hearings***. Public hearings shall be called by the Chair as directed by the Delegation for the purpose of hearing the views of the citizens and organizations of citizens upon specific or general matters of the public interest. Persons presenting testimony at public hearings shall be requested to also prepare a written presentation of their views with sufficient copies for each member of the Delegation. Members of the Fulton County Senate Delegation shall be invited to all Public Hearings. At least one (1) public hearing shall be held between November 10 and January 5 of each year.

Section 8. ***Parliamentarian***. The Chair shall appoint a member of the Delegation to serve as Parliamentarian. The Parliamentarian shall be knowledgeable about the rules of the Delegation and Parliamentary procedures and shall advise the Chair on parliamentary questions. The ruling of the Chair on parliamentary issues shall be final unless overruled by a majority of the quorum.

Article III

Legislative Procedures

Section 1. ***Official Request for Legislation by Governmental Bodies***. The legislative request of each governmental body within Fulton County must be accompanied by a Resolution of the governmental body requesting legislative action on the requests.

All official request [sic] shall be presented to the Delegation in bill form.

The Chair shall call a meeting of the Delegation at least one (1) week prior to the start of the legislative session to discuss legislative request [sic] by local governments, school boards and organizations.

Section 2. ***Procedure for Local Legislation***.

a) It shall be the responsibility of the Delegation's Administrative Assistant to obtain the number of all local legislation assigned by the Clerk of the House to the Fulton County House Delegation. The Delegation's Administrative Assistant shall secure a copy for each member and docket the bill for Delegation consideration.

b) The Chair shall assign each bill within six (6) calendar days after the copies are received to a standing committee of the Delegation for its study and recommendation. No bill may be considered by the Delegation until it has been reported by a committee unless the bill has been in committee for eight (8) calendar days. After eight (8) calendar days, the author or a member at the request of the author may request the Chair to place the bill on the agenda of the next regular Delegation meeting and the Chair shall place the bill on the agenda for consideration.

c) Any bill must receive the affirmative vote of the majority of the quorum of the Fulton Delegation members eligible to vote on a particular bill before it may be signed by members of the Delegation. Any Representative voting in favor of a bill will be considered obligated to sign the bill in accordance with his or her vote unless the Representative notifies the Administrative Assistant within forty-eight (48) hours following the vote of his or her desires to change his or her vote.

d) In the event a bill receives a majority of the quorum of those Fulton Delegates eligible to vote on a particular bill, the author may seek to secure the signatures of those members not present at the Delegation meeting.

e) In the event a bill fails to receive a majority of the quorum of those Fulton Delegates eligible to vote on a particular one, the bill may be brought before the Delegation for consideration at the next Delegation meeting or assigned by the Chair to committee for further study. The action taken by the Delegation on all legislation shall be reported to the State Planning and Community Affairs Committee.

f) No Fulton County Delegation local legislation shall be reported by the State Planning and Community Affairs Committee unless it bears certification by the Chair of the Fulton County Delegation that said bill has been considered in conformity with the Rules of the Fulton House Delegation. The Chair shall certify all bills which are passed by the Delegation in conformity with the Rules of the Fulton House Delegation.

g) A Fiscal Note must be made available for all salary and pensions legislation prior to any consideration by a committee of the Delegation or the full Delegation.

Section 3. ***Procedure for Population Bills***. The Fulton County House Delegation shall approve all population bills affecting Fulton County. Two-thirds (2/3) signatures of those eligible to vote on the bill will be obtained to show approval for each bill.

Article IV

Miscellaneous

Section 1. ***Restrictions***. The Fulton County House Delegation is a body composed of individually elected Representatives representing districts defined by statute. No member or Representative thereof is authorized or empowered to speak for the Delegation, issue public statements on its behalf in regard to future legislation, positions, or policy of the Delegation unless the consent of two-thirds (2/3) of the members of the Delegation has been obtained. Any statements made by an individual Representative not approved by the Delegation as provided herein shall be construed to be his or her own individual views as an elected official, and it shall be the duty of and responsibility of each individual Representative to so advise the person to whom the statement is conveyed.

Section 2. ***Cooperation with the Fulton County Senate Delegation***. It shall be the policy of the Fulton House Delegation to cooperate fully and completely with the Fulton Senate Delegation in all matters, especially as regards expediting the passage of local legislation before the General Assembly and the holding of public meetings or hearings for the purpose of discussion and/or presentation of issues or legislation or local or statewide interest.

Section 3. ***Disclosure of Interest in Legislation***. A member of the Delegation who has a financial interest in any legislation before the Delegation shall disclose upon the minutes the nature and extent of such interest prior to casting his or her vote. This provision shall not apply if the member disqualifies himself or herself from voting on the particular measure.

Section 4. ***Local Governmental Bodies***. It shall be the policy of the Fulton County House Delegation to seek close cooperation and communication with the various governmental bodies within the County. The Chair shall designate a member of the Delegation to serve as liaison with each governmental body. To better accomplish this stated objective, each governmental body is requested to designate a liaison with the Fulton House Delegation. Said liaison shall be empowered to express to the Delegation the views of the governmental body concerning matters pending before the Delegation. The liaison shall secure for the Delegation factual information from withir the domain of the governmental body which is germane to the determination of matters pending before the Delegation or the Full House of Representatives.

Section 5. ***Cut-off Date***. Unless two-thirds (2/3) of the Delegation approve consideration, no legislation introduced into the House will be considered or acted upon by the Delegation if not introduced in the first twenty (20) legislative days of the General Assembly.

"Section 6. ***Required Signature on Local Legislation***.

a) As to municipalities, only those legislators whose districts contain land in said municipality shall sign legislation affecting said municipality.

b) All eighteen (18) members of the Fulton County Delegation are eligible to sign legislation affecting Fulton County, including annexation, consolidation, or incorporation.

c) Except for annexation, consolidation, or incorporation legislation all local legislation applicable

only to the City of Atlanta or the Atlanta Board of Education shall be processed by the City of Atlanta House Delegation.

[d] (*reserved*)

e) Only those Fulton County Representatives whose districts contain land in Fulton County School District shall be eligible to sign legislation affecting said school district.

f) Two-thirds (2/3) of those eligible to sign must sign in order for any legislation to pass. Where two-thirds (2/3) of those eligible to vote is not a whole number, the number required to sign the legislation in order for it to pass shall be rounded up to the next whole number."

COUNTIES WITHIN GEORGIA SENATE DISTRICTS

Senate District #	County Name	Split County	Total County Population	County Population in District	Percent of County in District	Percent of District in County
1	BRYAN	*	15,438	7,455	48.3	6.6
1	CHATHAM	*	216,935	106,062	48.9	93.4
2	CHATHAM	*	216,935	110,873	51.1	100.0
3	BRYAN	*	15,438	7,983	51.7	7.2
3	GLYNN	*	62,496	35,667	57.1	32.1
3	LIBERTY		52,745	52,745	100.0	47.4
3	LONG		6,202	6,202	100.0	5.6
3	MCINTOSH		8,634	8,634	100.0	7.8
4	BULLOCH		43,125	43,125	100.0	36.7
4	EFFINGHAM		25,687	25,687	100.0	21.9
4	EVANS		8,724	8,724	100.0	7.4
4	JENKINS		8,247	8,247	100.0	7.0
4	SCREVEN		13,842	13,842	100.0	11.8
4	TATTNALL		17,722	17,722	100.0	15.1
5	DEKALB	*	545,837	48,001	8.8	41.0
5	GWINNETT	*	352,910	69,196	19.6	59.0
6	APPLING		15,744	15,744	100.0	13.1
6	BRANTLEY		11,077	11,077	100.0	9.2
6	GLYNN	*	62,496	26,829	42.9	22.3
6	MONTGOMERY		7,163	7,163	100.0	5.9
6	PIERCE		13,328	13,328	100.0	11.1
6	TOOMBS		24,072	24,072	100.0	20.0
6	WAYNE		22,356	22,356	100.0	18.5
7	BERRIEN		14,153	14,153	100.0	12.2
7	CAMDEN		30,167	30,167	100.0	26.1
7	CHARLTON		8,496	8,496	100.0	7.3
7	CLINCH		6,160	6,160	100.0	5.3
7	COOK		13,456	13,456	100.0	11.6
7	ECHOLS		2,334	2,334	100.0	2.0
7	LANIER		5,531	5,531	100.0	4.8
7	WARE		35,471	35,471	100.0	30.6
8	BROOKS		15,398	15,398	100.0	12.9
8	LOWNDES		75,981	75,981	100.0	63.8
8	THOMAS	*	38,986	27,652	70.9	23.2
9	GWINNETT	*	352,910	120,450	34.1	100.0
10	DEKALB	*	545,837	109,927	20.1	100.0
11	COLQUITT	*	36,645	16,403	44.8	13.6

COUNTIES WITHIN GEORGIA SENATE DISTRICTS

Senate District #	County Name	Split County	Total County Population	County Population in District	Percent of County in District	Percent of District in County
11	DECATUR		25,511	25,511	100.0	21.1
11	EARLY		11,854	11,854	100.0	9.8
11	GRADY		20,279	20,279	100.0	16.8
11	MILLER		6,280	6,280	100.0	5.2
11	MITCHELL		20,275	20,275	100.0	16.8
11	SEMINOLE		9,010	9,010	100.0	7.4
11	THOMAS	*	38,986	11,334	29.1	9.4
12	BAKER		3,615	3,615	100.0	3.0
12	CALHOUN		5,013	5,013	100.0	4.2
12	CLAY		3,364	3,364	100.0	2.8
12	DOUGHERTY		96,311	96,311	100.0	81.3
12	QUITMAN		2,209	2,209	100.0	1.9
12	RANDOLPH		8,023	8,023	100.0	6.8
13	COLQUITT	*	36,645	20,242	55.2	16.8
13	CRISP		20,011	20,011	100.0	16.6
13	DOOLY		9,901	9,901	100.0	8.2
13	TIFT		34,998	34,998	100.0	29.0
13	TURNER		8,703	8,703	100.0	7.2
13	WILCOX		7,008	7,008	100.0	5.8
13	WORTH		19,745	19,745	100.0	16.4
14	LEE		16,250	16,250	100.0	14.7
14	MACON		13,114	13,114	100.0	11.9
14	PEACH		21,189	21,189	100.0	19.2
14	SCHLEY		3,588	3,588	100.0	3.2
14	STEWART		5,654	5,654	100.0	5.1
14	SUMTER		30,228	30,228	100.0	27.3
14	TAYLOR		7,642	7,642	100.0	6.9
14	TERRELL		10,653	10,653	100.0	9.6
14	WEBSTER		2,263	2,263	100.0	2.0
15	CHATTAHOOCHEE		16,934	16,934	100.0	15.3
15	MUSCOGEE	*	179,278	93,741	52.3	84.7
16	HARRIS		17,788	17,788	100.0	15.4
16	MARION		5,590	5,590	100.0	4.8
16	MUSCOGEE	*	179,278	85,537	47.7	74.1
16	TALBOT		6,524	6,524	100.0	5.7
17	BUTTS		15,326	15,326	100.0	13.8
17	HENRY		58,741	58,741	100.0	52.7
17	NEWTON	*	41,808	12,575	30.1	11.3
17	ROCKDALE	*	54,091	24,798	45.8	22.3

COUNTIES WITHIN GEORGIA SENATE DISTRICTS

Senate District #	County Name	Split County	Total County Population	County Population in District	Percent of County in District	Percent of District in County
18	BIBB	*	149,967	8,047	5.4	6.9
18	BLECKLEY		10,430	10,430	100.0	9.0
18	HOUSTON		89,208	89,208	100.0	77.0
18	PULASKI		8,108	8,108	100.0	7.0
19	ATKINSON		6,213	6,213	100.0	5.6
19	BACON		9,566	9,566	100.0	8.6
19	BEN HILL		16,245	16,245	100.0	14.6
19	COFFEE		29,592	29,592	100.0	26.7
19	DODGE		17,607	17,607	100.0	15.9
19	IRWIN		8,649	8,649	100.0	7.8
19	JEFF DAVIS		12,032	12,032	100.0	10.8
19	TELFAIR		11,000	11,000	100.0	9.9
20	CANDLER		7,744	7,744	100.0	7.0
20	EMANUEL		20,546	20,546	100.0	18.6
20	JEFFERSON	*	17,408	4,091	23.5	3.7
20	JOHNSON		8,329	8,329	100.0	7.5
20	LAURENS		39,988	39,988	100.0	36.1
20	TREUTLEN		5,994	5,994	100.0	5.4
20	WASHINGTON		19,112	19,112	100.0	17.3
20	WHEELER		4,903	4,903	100.0	4.4
21	COBB	*	447,745	121,377	27.1	100.0
22	RICHMOND	*	189,719	111,024	58.5	100.0
23	BURKE		20,579	20,579	100.0	17.0
23	GLASCOCK		2,357	2,357	100.0	1.9
23	JEFFERSON	*	17,408	13,317	76.5	11.0
23	RICHMOND	*	189,719	78,695	41.5	65.0
23	WARREN		6,078	6,078	100.0	5.0
24	COLUMBIA		66,031	66,031	100.0	57.9
24	LINCOLN		7,442	7,442	100.0	6.5
24	MCDUFFIE		20,119	20,119	100.0	17.7
24	OGLETHORPE		9,763	9,763	100.0	8.6
24	WILKES		10,597	10,597	100.0	9.3
25	BALDWIN		39,530	39,530	100.0	33.5
25	GREENE		11,793	11,793	100.0	10.0
25	HANCOCK		8,908	8,908	100.0	7.6
25	JASPER		8,453	8,453	100.0	7.2
25	JONES	*	20,739	20,337	98.1	17.2
25	MORGAN		12,883	12,883	100.0	10.9
25	PUTNAM		14,137	14,137	100.0	12.0

COUNTIES WITHIN GEORGIA SENATE DISTRICTS

Senate District #	County Name	Split County	Total County Population	County Population in District	Percent of County in District	Percent of District in County
25	TALIAFERRO		1,915	1,915	100.0	1.6
26	BIBB	*	149,967	91,691	61.1	81.8
26	JONES	*	20,739	402	1.9	0.4
26	TWIGGS		9,806	9,806	100.0	8.7
26	WILKINSON		10,228	10,228	100.0	9.1
27	BIBB	*	149,967	50,229	33.5	43.4
27	CRAWFORD		8,991	8,991	100.0	7.8
27	LAMAR		13,038	13,038	100.0	11.3
27	MONROE		17,113	17,113	100.0	14.8
27	UPSON		26,300	26,300	100.0	22.7
28	COWETA		53,853	53,853	100.0	45.4
28	FAYETTE	*	62,415	31,970	51.2	27.0
28	SPALDING	*	54,457	32,800	60.2	27.7
29	HEARD		8,628	8,628	100.0	7.3
29	MERIWETHER		22,411	22,411	100.0	18.9
29	PIKE		10,224	10,224	100.0	8.6
29	SPALDING	*	54,457	21,657	39.8	18.3
29	TROUP		55,536	55,536	100.0	46.9
30	CARROLL		71,422	71,422	100.0	58.8
30	DOUGLAS	*	71,120	49,945	70.2	41.2
31	BARTOW	*	55,911	23,275	41.6	19.3
31	HARALSON		21,966	21,966	100.0	18.2
31	PAULDING		41,611	41,611	100.0	34.5
31	POLK		33,815	33,815	100.0	28.0
32	COBB	*	447,745	114,655	25.6	100.0
33	COBB	*	447,745	119,753	26.7	100.0
34	CLAYTON	*	182,052	62,728	34.5	51.8
34	DOUGLAS	*	71,120	21,175	29.8	17.5
34	FAYETTE	*	62,415	30,445	48.8	25.1
34	FULTON	*	648,951	6,848	1.1	5.7
35	FULTON	*	648,951	109,880	16.9	100.0
36	FULTON	*	648,951	110,151	17.0	100.0
37	CHEROKEE	*	90,204	33,740	37.4	27.8
37	COBB	*	447,745	87,490	19.5	72.2
38	COBB	*	447,745	4,470	1.0	4.1
38	FULTON	*	648,951	105,761	16.3	95.9
39	FULTON	*	648,951	110,691	17.1	100.0
40	FULTON	*	648,951	111,380	17.2	100.0
41	DEKALB	*	545,837	51,333	9.4	44.4

COUNTIES WITHIN GEORGIA SENATE DISTRICTS

Senate District #	County Name	Split County	Total County Population	County Population in District	Percent of County in District	Percent of District in County
41	GWINNETT	*	352,910	64,230	18.2	55.6
42	DEKALB	*	545,837	110,176	20.2	100.0
43	DEKALB	*	545,837	112,035	20.5	100.0
44	CLAYTON	*	182,052	119,324	65.5	100.0
45	BARROW	*	29,721	13,603	45.8	12.3
45	NEWTON	*	41,808	29,233	69.9	26.4
45	ROCKDALE	*	54,091	29,293	54.2	26.5
45	WALTON		38,586	38,586	100.0	34.9
46	BARROW	*	29,721	16,118	54.2	13.3
46	CLARKE		87,594	87,594	100.0	72.2
46	OCONEE		17,618	17,618	100.0	14.5
47	BANKS		10,308	10,308	100.0	8.8
47	ELBERT		18,949	18,949	100.0	16.2
47	FRANKLIN		16,650	16,650	100.0	14.3
47	HART		19,712	19,712	100.0	16.9
47	JACKSON		30,005	30,005	100.0	25.7
47	MADISON		21,050	21,050	100.0	18.0
48	FORSYTH	*	44,083	21,685	49.2	18.1
48	FULTON	*	648,951	5,915	0.9	4.9
48	GWINNETT	*	352,910	91,969	26.1	76.9
49	FORSYTH	*	44,083	22,398	50.8	19.0
49	HALL		95,428	95,428	100.0	81.0
50	DAWSON		9,429	9,429	100.0	8.0
50	HABERSHAM		27,621	27,621	100.0	23.4
50	LUMPKIN		14,573	14,573	100.0	12.3
50	RABUN		11,648	11,648	100.0	9.8
50	STEPHENS		23,257	23,257	100.0	19.7
50	TOWNS		6,754	6,754	100.0	5.7
50	UNION		11,993	11,993	100.0	10.1
50	WHITE		13,006	13,006	100.0	11.0
51	CHEROKEE	*	90,204	40,204	44.6	33.8
51	FANNIN		15,992	15,992	100.0	13.4
51	GILMER		13,368	13,368	100.0	11.2
51	GORDON		35,072	35,072	100.0	29.5
51	PICKENS		14,432	14,432	100.0	12.1
52	BARTOW	*	55,911	32,636	58.4	28.7
52	FLOYD		81,251	81,251	100.0	71.3
53	CHATTOOGA		22,242	22,242	100.0	19.1
53	DADE		13,147	13,147	100.0	11.3
53	WALKER		58,340	58,340	100.0	50.1
53	WHITFIELD	*	72,462	22,767	31.4	19.5
54	CATOOSA		42,464	42,464	100.0	35.9
54	MURRAY		26,147	26,147	100.0	22.1
54	WHITFIELD	*	72,462	49,695	68.6	42.0
55	DEKALB	*	545,837	114,365	21.0	100.0
56	CHEROKEE	*	90,204	16,260	18.0	14.6
56	FULTON	*	648,951	88,325	13.6	79.1
56	GWINNETT	*	352,910	7,065	2.0	6.3

Amendment XIV

(Ratified July 9, 1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President,

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* Changed by Section I of the twenty-sixth amendment.

or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

No. 02-195

(2)

Supreme Court, U.S.
FILED
SEP 6 2002
CLERK

In The
Supreme Court of the United States

TIBERIO P. DEJULIO and EVA C. GALAMBOS,

Petitioners,

v.

STATE OF GEORGIA, ROY E. BARNES, in his official capacity as the Governor of Georgia, MARK F. TAYLOR, in his official capacity as Lieutenant Governor of Georgia, THOMAS B. MURPHY, in his official capacity as Speaker of the House of Representatives of the State of Georgia, GEORGIA HOUSE OF REPRESENTATIVES, GEORGIA SENATE, FULTON COUNTY HOUSE DELEGATION, FULTON COUNTY SENATE DELEGATION, JAMES MCKINNEY, in his official capacity as Chairperson of the Fulton County House Delegation, DAVID SCOTT, in his official capacity as Chairperson of the Fulton County Senate Delegation, and Unknown 1-158 DOE COUNTY HOUSE AND SENATE DELEGATIONS,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION FOR THE RESPONDENTS

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QUESTION PRESENTED

1.

Did the Court of Appeals correctly determine as a matter of fact and law that legislative representatives who make up "local delegations" in the Georgia General Assembly did not perform governmental functions and were not subject to the "one person, one vote" requirements of the Fourteenth Amendment?

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STATEMENT OF THE CASE

A. Course of the Proceedings

On February 2, 2000, Petitioners filed a complaint seeking declaratory and injunctive relief in the Northern District of Georgia. Petitioners claimed that certain legislative committees or delegations within the Georgia General Assembly were subject to the "one person, one vote" requirement recognized under the Fourteenth Amendment and that any changes in the rules of such internal legislative entities were subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended.

Respondents moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Petitioners amended their complaint, opposed the motion to dismiss and filed a motion for partial summary judgment. Respondents opposed the motion for partial summary judgment and, by order dated December 26, 2000, the district court converted the Respondents' original motion to dismiss into a motion for summary judgment.

On January 26, 2001 the district court entered its final order and judgment granting summary judgment to the Respondents on all grounds. *DeJulio v. Georgia,* 127 F. Supp. 2d 1274 (N.D. Ga. 2001) (Pet. App. at 28-85). The Court of Appeals originally denied and dismissed the case on the grounds of abstention. *DeJulio v. Georgia*, 276 F.3d 1244 (11th Cir. 2001) (Pet. App. at 13-27). However, on Petitioners' motion for rehearing, the original panel vacated its decision and affirmed the decision of the district court on its merits. *DeJulio v. Georgia*, 290 F.3d 1291 (11th Cir. 2002) (Pet. App. at 1-12).

Petitioners now seek review of the decision of the Court of Appeals solely on the "one person, one vote" issue, abandoning their Voting Rights Act claim. Additionally, while Petitioners make some allusion that they are arguing on behalf of "53 counties" out of Georgia's 159 counties (*See* Pet. at 5), the district court in fact found that Petitioners had standing only to raise claims regarding the operation of a single county's legislative delegation. *DeJulio*, 127 F. Supp. 2d at 1289, 1290 (Pet. App. at 55-56, 58-59). This is the posture of the case as it is presented to the Court for consideration.

B. Statement Of Facts

There are very few, if any, contested facts in this case, as demonstrated by the opinions of the district court and Court of Appeals below. *See DeJulio*, 290 F.3d at 1292-94 (Pet. App. 3-5); *DeJulio*, 127 F. Supp. 2d at 1280-81 (Pet. App. at 34-38). Those facts essentially show that the Georgia General Assembly has developed an internal method of managing the flow of legislation that deals only with a particular political subdivision such as a city or county. Legislators who represent any geographic territory within such a political subdivision are considered members of a "local delegation" for that subdivision. The "local delegation" then acts as a vehicle within the General Assembly for managing the presentation and consideration of legislation that affects only that political subdivision. *DeJulio*, 290 F. 3d at 1293-94 (Pet. App. at 3-5).

Contrary to the Petitioners' assertions that these local delegations somehow act as independent law-making bodies, both the district court and the Court of Appeals

made factual findings that this was not so. The Court of Appeals specifically found:

> [N]o final governmental authority is granted to the Georgia General Assembly's local delegations. The Georgia Constitution explicitly provides that the General Assembly *as a whole*, not specific local delegations, is the legislative authority for Georgia's counties and municipalities. (Emphasis in original.)

DeJulio, 290 F.3d at 1295 n. 9 (Pet. App. at 8-9, n. 9). *See also DeJulio* 127 F. Supp. 2d at 1281 (Pet. App. at 37-38). Additionally, while one legislator might choose not to oppose another legislator's local legislation, this decision is a matter of custom and courtesy and is not binding in any way on the actual enactment of laws. *DeJulio*, 290 F.3d at 1294 (Pet. App. at 4-5). As a factual matter, this custom and courtesy in no way transformed "local delegations" into separate law-making bodies. *Id.*

Further facts will be developed herein as is necessary to demonstrate the Respondents' position that this Petition for Writ of Certiorari should be denied.

REASONS FOR DENYING THE WRIT

A. THE COURT OF APPEALS CORRECTLY DETERMINED THAT LOCAL DELEGATIONS WITHIN THE GEORGIA GENERAL ASSEMBLY WERE NOT SUBJECT TO THE ONE PERSON, ONE VOTE REQUIREMENTS OF THE U.S. CONSTITUTION.

In rejecting the Petitioners' claims below and affirming the extensive opinion of the district court, the Court of

Appeals' clear and well-reasoned opinion evidences a correct interpretation of the law and demonstrates why this Petition for Writ of Certiorari should be denied. In attempting to argue to the contrary, the Petitioners misinterpret this Court's prior precedent and misapply it to the facts at hand.

The heart of the Petitioners' case is their claim that the "local delegations" within the Georgia General Assembly exercise governmental powers equivalent to those of a locally elected governmental body. Based on this assumption, repeatedly rejected below, the Petitioners then posit that the one person, one vote requirement as analyzed by this Court in *Hadley v. Junior College Dist.*, 397 U.S. 50 (1970), should apply to these local delegations so that each member of a local delegation should represent relatively the same number of persons. This argument was extensively addressed both by the district court and the Court of Appeals, both of which reached the identical conclusion that neither the facts nor the law warranted such a conclusion. *DeJulio*, 290 F.3d at 1294-97 (Pet. App. at 6-10); *DeJulio*, 127 F. Supp. 2d at 1294-99 (Pet. App. at 66-79).

In both of these opinions, this Court's decision in *Hadley* was correctly interpreted and applied. The Court of Appeals properly determined that:

> [U]nder Hadley, in order for the "one person, one vote" requirement to apply to the General Assembly's local delegations, Voters [the Petitioners] must show: (1) that the House and Senate delegations are selected by "popular election;" and (2) that these delegations perform "governmental functions."

DeJulio, 290 F.3d at 1295, *citing Hadley*, 397 U.S. at 56 (Pet. App. at 7). *See also DeJulio*, 127 F. Supp. 2d at 1294 (Pet. App. at 66-67). There is no question that individual members of the Georgia General Assembly are popularly elected. *Id.* Therefore, the only remaining inquiry for the courts below was whether these local delegations performed "governmental functions." *Id.*

In discussing this issue, the Court of Appeals noted that:

> The Supreme Court has recognized the following functions as governmental: the ability to "levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college . . ." appoint county officials, make contracts, establish and maintain a courthouse and jail, administer the county welfare system, perform duties in connection with elections, set the county tax rate, build roads and bridges, adopt the county budget, build and run hospitals, airports, and libraries, fix school district boundaries, establish a housing authority, and determine the election districts for county commissioners. (Internal citations omitted.)

DeJulio, 290 F. 3d at 1295 (Pet. App. at 7-8), *citing Hadley*, 397 U.S. at 53-54; *Avery v. Midland County*, 390 U.S. 474, 476-77 (1968). *See also DeJulio*, 127 F. Supp. 2d at 1295 (Pet. App. at 68-69). Because the "local delegations" of the Georgia General Assembly carry out none of these activities, the Petitioners were relegated to arguing that the delegations carried out "law making" functions which were

equivalent to "governmental functions" so that the delegations should be subject to the one person, one vote requirement.

Both the district court and the Court of Appeals made short work of this particular argument. After noting that no final governmental authority is granted to any of these local delegations, both courts recognized that as a matter of fact and law, the final authority to make law in the State of Georgia is vested and remains with the House, the Senate and the Governor. *DeJulio*, 290 F.3d at 1296 (Pet. App. at 8-10); *DeJulio*, 127 F. Supp. 2d at 1298-1300 (Pet. App. at 74-79). Given that no "governmental functions", including "law making", were vested in these legislative local delegations, the Court of Appeals correctly concluded that the one person, one vote requirement did not apply to the delegations.

This conclusion was not altered by the Petitioners' reliance on *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999), a challenge to the operation of "local delegations" in the South Carolina legislature where the delegations functioned very differently from Georgia. As the Court of Appeals noted below:

> [A]s the district court points out, Voters' [Petitioners here] ignore important relevant distinctions between the role of South Carolina's local legislative delegations and those of Georgia. The district court distinguishes Vander Linden by noting:
>
> A reading of the statutes at issue in Vander Linden shows that South Carolina's local legislative delegations performed local governmental functions either in lieu of or in concert with local governments, depending on the situation. The

> Statutes the Fourth Circuit cited in Vander Linden do not limit the role of South Carolina's local legislative delegations to consideration of local legislation. They instead broadly define the role of South Carolina's local legislative delegations in overseeing and approving local governments' general activities. Indeed most of these statutes provide that the local delegation, not the entire General Assembly, is the final authority . . .

DeJulio, 290 F.3d at 1295 n. 9, *quoting DeJulio*, 127 F. Supp. 2d at 1296-97 (Pet App. at 8, 71-72).

In fact, the local delegations in South Carolina were specifically responsible for a number of local government functions including:

1. making and/or recommending appointments to boards and commissions;

2. approving and/or recommending the expenditure of money allocated by the South Carolina General Assembly for highways, parks, recreation, tourism, and other matters;

3. approving the budgets of local school districts;

4. initiating referenda regarding the budgetary powers and the election of governing bodies for a special purpose in public service districts;

5. approving the reimbursement of expenses for county planning commissioners;

6. approving county planning commission contracts with architects, engineers, and other consultants;

7. altering or dividing school districts of counties;

8. reducing existing special school levies in counties and school districts; and

9. submitting grant applications for planning, development, and renovating park and recreation facilities.

DeJulio, 127 F. Supp. 2d at 1296, *citing Vander Linden*, 193 F.3d at 270-71 (Pet. App. at 69-70). In contrast, no such powers are provided under Georgia law to delegations of local legislators. *DeJulio*, 290 F.3d at 1295 n. 9; *DeJulio*, 127 F. Supp. 2d at 1297-98 (Pet. App. at 8-9, 73-74). These factual distinctions between the internal operations of the two States make the *Vander Linden* opinion inapposite to this case and the Petitioners' request for certiorari.

CONCLUSION

WHEREFORE, because the courts below have properly interpreted the law and this Court's precedent and because, as demonstrated by the opinions below, there is no factual basis for the Petitioners' claims the Respondents respectfully request this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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